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# BUNCOMBE COUNTY

# CITY OF ASHEVILLE

# CITY COUNCIL

# MINUTES

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# THE FOLLOWING RECORDS ARE FILMED IN THE ORDER IN WHICH THEY WERE RECEIVED

# BUNCOMBE COUNTY

# CITY OF ASHEVILLE

# CITY COUNCIL

# MINUTES

# VOLUME: 88

# (MARCH 8, 2011 – NOVEMBER 22, 2011)

(PAGES: INDEX – 539)

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**Analyst:** Kurt Brenneman
**Date:** 3/7/2014

*Name of the county or municipality, or other public body:*

**City of Asheville**

*Name of the board, council, department, or agency:*

**City Council**

*Volume and page numbers included:*

**Minute Book 84, p. 1-477; Minute Book 85, p. 1-511; Minute Book 86, p. 1-525; Minute Book 87, p. 1-513; Minute Book 88, p. 1-537; Minute Book 89, p. 1-502; Minute Book 90, p. 1-513**

*Exact dates of the records included:*

**7/5/2008 – 8/13/2013**

Records are: ☒ Minutes ☐ Resolutions ☐ Ordinances

Other: **Includes index pages**

Are these records in reverse order? No

The details above were compiled from: ☒ Cover letters supplied by the originating office
☐ Contact with the originating office
☐ Examining the records

Person submitting the minutes for filming: Maggie Burleson

Notes: Originals; double-sided

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CITY OF ASHEVILLE, CITY COUNCIL, MINUTES

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Tuesday – March 8, 2011 – 3:30 p.m.
First Floor North Conference Room

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**Strategic Operating Plan**

Director of Administrative Services Lauren Bradley said that this is a continuation of the Strategic Operating Plan review from Council's February 4 retreat. Staff compiled the goals and objectives into a word document, highlighting changes. The new "Multimodal Transportation" focus area has not been wordsmithed by staff, pending Council's review.

Throughout discussion, Council reviewed the draft Strategic Operating Plan which goals and objectives were confirmed, amended or deleted.

It was the consensus of Council, at the Mayor's suggestion, to add an approximate dollar amount necessary to achieve each objective, and to bring that analysis back to Council at the April 12 worksession.

Councilman Smith hoped to have the next City Council Retreat longer than one day to make sure that they are not rushed in compiling their Strategic Operating Plan and not devote the entire retreat to goal-setting. He volunteered to be on the next Retreat Committee.

**Budget Calendar**

Director of Administrative Services Lauren Bradley reviewed the Fiscal Year 2011-12 budget planning calendar.

Council discussed (1) the next Finance Committee meeting which will be to discuss the fees and charges; (2) regarding new census numbers, an analysis to be provided by Ms. Bradley regarding the per capita costs for services; (3) regarding new census numbers, seats on the Metropolitan Sewerage District Board which City Attorney Oast would provide to Council; (4) the difference between the October Capital Improvement Plan mini-retreat and the information to be presented at the budget briefing on April 12 (which will be sent out in advance to Council); (5) information regarding ridership on the buses due to the increase of gas prices; and (7) update on the new MAHEC building on Hendersonville Road's request for transit service.

At 4:31 p.m., Mayor Bellamy recessed the worksession until the 5:00 p.m. formal meeting in the Council Chamber.

Tuesday – March 8, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith;

City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilwoman Manheimer gave the invocation.

Mayor Bellamy asked for a moment of silence in memory of the passing of Mr. Robert P. "Bob" Ingle.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF UNC-A MEN'S BASKETBALL TEAM**

Mayor Bellamy and Councilman Davis were very pleased to announce that UNC-Asheville has won six games in a row and captured its third Big South Conference championship with a 60-47 victory over Coastal Carolina Saturday night on Coastal's homecourt. The Bulldogs have a 19-13 overall record this year. Asheville has qualified for the NCAA Tournament for the second time in school history.

UNC Asheville had three players make the All-Tournament team. They are Matt Dickey, John Williams and J.P. Primm. John Williams set a Big South record with six blocked shots in the championship game victory over Coastal Carolina. Matt Dickey was named Tournament Most Valuable Player.

The Bulldogs made their final season a winning one in the final season of play at Justice Center. UNC-Asheville went 10-5 at Justice and won the final game ever played there last Tuesday night over Charleston Southern, 72-63.

UNC-Asheville had three players scored their 1,000$^{th}$ career point this season in John Williams, Matt Dickey and J.P. Primm.

Matt Dickey was a first team Big South All-Conference selection, while J.P. Primm was a second team all-conference selection. Matt also made the Big South All-Academic team.

UNC-Asheville head coach Eddie Biedenbach recorded his 200$^{th}$ win as Bulldog head coach this season. He is the Big South's all-time winningest head coach for both overall wins and conference victories.

Mayor Bellamy presented Coach Biedenbach with a key to the City, along with Asheville ballcaps to members of the team and staff. She acknowledged that the team worked hard for their accomplishments and was proud for them to represent the City of Asheville well.

Coach Biedenbach and Director of Athletics Janet Cone commended the players for their teamwork as they are great student athletics. They presented City Council with a T-shirt.

The following individuals were recognized: Janet Cone, Director of Athletics; Mike Gore, Associate Director of Athletics; Head Coach: Eddie Biedenbach; Assistant Coaches: Nick McDevitt, Brett Carey, Kotie Kimble; Players: John Williams, Eric Stubbs, Matt Dickey, J.P. Primm, Chris Stephenson, Quinard Jackson, D.J. Cunningham, Madison Davis, Jeremy Harn, Jaron Lane, Josh Seligson, Toles Hartman, Trent Meyer, and Chew-dee-ah Pal.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 22, 2011**

**B. RESOLUTION NO. 11-44 - RESOLUTION CONFIRMING CITY COUNCIL SUPPORT OF PARTICIPATION IN THE YWCA'S "STAND AGAINST RACISM" EVENT ON APRIL 29, 2011**

Summary: The consideration of a resolution for City Council support for the City's participation in the YWCA's "Stand against Racism" effort on April 29, 2011.

The YWCA of Asheville is participating in a nationwide "Stand against Racism" event to be held April 29, 2011, and has requested community organizations plan events in support of the overall effort to acknowledge racism still exists in our community.

A walking diversity tour of downtown is being proposed as a supplement to an ongoing collaborative diversity campaign between the City of Asheville and Buncombe County Health and Human Services. Approximately 15 -20 employees from the City of Asheville would receive training prior to the event from the Center for Diversity Education. City employees would use their lunch hour to sign up for time slots throughout the day in which they would walk the predetermined .5 mile route, led in groups by the trained peer guides, through downtown Asheville.

The tour will examine areas within a short distance of City Hall that are significant to the stories of women's suffrage, the history of slavery and civil rights, the impact of Native Americans, Jewish business and the Scots-Irish in the growth of Asheville as a center of commerce, how the LGBT, Hispanic, Asian and eastern European/Slavic communities contribute to the economic and cultural health of our community and why the changing face of our city, county and region is important to and impacts each of us as citizens and/or employees.

Buncombe County employees would be invited to participate with their City of Asheville colleagues. A virtual version of the tour will be made available to employees who are not able to participate due to physical or scheduling limitations.

Short video interviews in which participants share what standing against racism means to them would be taped as groups complete their walk. The interviews would then be posted on City of Asheville websites.

Pros:

- Participation in the event will allow individuals the opportunity to express their desire to stand against racism during their lunch hour.
- The walk and associated videos will make a visual statement about the City's support of YWCA of Asheville's mission of ending racism.
- The walk also meets Asheville Balanced Choices (ABC's) employee wellness goals for increased physical activity opportunities.
- The event is an expression of the City of Asheville's core value of Diversity.
- The walking tours are planned to continue beyond the Stand against Racism throughout the year to highlight the City of Asheville's year-round commitment to value and highlight diversity in our community.

Con:

- Eradicating racism involves much more than making a visual statement.

As participation in the event would take place during employee lunch hours, there is no fiscal impact involved in organizing the walk. The training and subsequent walking tours are part of an ongoing diversity training initiative that is supported by management as an important component of employee training and development.

City staff recommends City Council adopt a resolution of support for a City of Asheville walking diversity tour in support of the YWCA's "Stand against Racism" effort.

**RESOLUTION BOOK NO. 33 – PAGE 353**

**C. RESOLUTION NO. 11-45 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO PURCHASE UP TO 900 LED ROADWAY STREET LIGHT FIXTURES**

Summary: The consideration of a resolution authorizing the City of Asheville to purchase up to 900 LED Roadway street light fixtures not to exceed $290,000.

City Council previously approved using grant funds approved through the Energy Efficiency and Conversation Block Grant (EECBG) for the procurement of up to 900 LED Roadway streetlights. The purpose of the grant is to reduce energy consumption, increase energy efficiency and reduce carbon footprint.

Upgrading 900 LED fixtures will reduce the municipal carbon footprint by an estimated 223 tons per year. As a result of the City of Asheville purchasing and owning these streetlights Progress Energy Carolinas (PEC) will provide a reduced electricity rate, which will result in $48,492 annual savings. Those savings will be reinvested into additional carbon footprint reduction efforts for the municipality. The purchase of the initial 900 fixtures will be considered Phase 1 in a larger program to upgrade all municipal streetlights with LEDs. Funding for the subsequent phases will be determined through the annual budget process. Phase 1 installation will be concentrated in the East of the River Way neighborhood otherwise know as the River District.

In order to receive the reduced electricity rate, the City of Asheville is required to purchase a PEC approved fixture. Currently the LED Roadway manufactured by BETA is the only approved fixture. Therefore, the City needs to pursue a single source provider purchase order with BETA. This is allowable as per N.C.G.S. 143-129(e) which states that "the governing body of a political subdivision of the state shall approve the purchase of apparatus, supplies, material or equipment without formal bidding when "(ii) a needed product is available from only one source of supply or (iii) standardization or compatibility is the overriding consideration"

This action complies with the Strategic Operating Plan by supporting Council's efforts to reduce the municipal carbon footprint reduction efforts by 4% each year and leverage internal and external partnerships for pursing capital improvements and infrastructure projects.

Pros:

- Phase 1 of this program will reduce the municipal carbon footprint 0.7%
- The City of Asheville will lead the state with Phase 1 being the largest LED street light installation to date.
- The savings from phase 1 street lighting will financially support future investments in carbon reduction measures.

Con:

- The City of Asheville will be responsible for streetlight replacement

The purchase of this equipment will use the remaining $290,000 of EECBG grant funds. No other city funds will be required for the project. The installation will reduce utility operations costs in the General Fund by $48,492 annually.

City staff recommends City Council adopt a resolution authorizing the City of Asheville to purchase up to 900 LED Roadway street light fixtures not to exceed $290,000.

**RESOLUTION BOOK NO. 33 – PAGE 354**

**D. RESOLUTION NO. 11-47 - RESOLUTION AUTHORIZING THE CITY MANAGER TO RENEW THE EXTENSION OF CONTRACT WITH THE N.C. DEPT. OF CRIME CONTROL & PUBLIC SAFETY FOR REGIONAL HAZARDOUS MATERIALS RESPONSE FOR REGION 6**

Summary: The consideration of a resolution authorizing the City Manager to renew the extension of contract with the N.C. Dept. of Crime Control & Public Safety for regional hazardous materials response for Region 6.

The N.C. Dept. of Public Safety and Crime Control is in the process of extending contracts from the dates of July 1, 2011, to June 30, 2012, with seven North Carolina governmental units in North Carolina for provision of regional hazardous materials emergency response. The City of Asheville has been a regional hazardous materials provider since Fiscal Year 1994-1995. The State of North Carolina provides funding that fully supports the operational costs of the program.

North Carolina is divided into seven geographical regions for the purpose of hazardous material emergency response. The North Carolina Department of Crime Control and Public Safety contracts with municipalities across North Carolina to respond into the geographical regions and provide technician level hazardous materials emergency response. The region six areas encompass the westernmost twenty counties.

Due to the time requirements of this contract, this action has not been presented to the Asheville City Council Public Safety Committee.

This action complies with the Strategic Operating Plan by assisting in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

Pros:

- The State of North Carolina provides the hazardous materials response apparatus, all response equipment and provides for administrative costs of operating the team. In addition, the state funds extensive training for members of the Asheville Fire Department to enable us to competently handle hazardous materials emergencies.
- The City of Asheville has full use of the apparatus and all specialty equipment within the City of Asheville. Without the state hazardous materials contract, Asheville taxpayers would need to provide much of the resources necessary to properly respond to emergencies within Asheville. With the contract, the equipment and resources are funded at the state level, rather than at the local level.
- During the seventeen years that we have provided regional hazardous materials response services, we have not experienced difficulties or disadvantages with the program.
- Firefighter and citizen safety will be enhanced.

Con:

- None have been identified or known at this time.

The State of North Carolina provides funding that fully supports the operational costs of the program; therefore there is no impact to the City's General Fund budget.

City staff recommends City Council authorize the City Manager to enter into the one year extension of and agreement with the N.C. Dept. of Crime Control and Public Safety to provide regional hazardous materials emergency response for region 6.

**RESOLUTION BOOK NO. 33 – PAGE 356**

**E. RESOLUTION NO. 11-48 - RESOLUTION OPPOSING HOUSE BILL 129 AND SENATE BILL 87 ENTITLED "LEVEL PLAYING FIELD/LOCAL GOV'T COMPETITION"**

Summary: The consideration of a resolution opposing the North Carolina House Bill 129 and Senate Bill 87.

The above bills are entitled, "Level Playing Field / Local Government Competition." This analysis refers to "Edition 1" of the bills, both dated 2-21-11.

The stated purpose of the bills is to protect jobs and promote investment in North Carolina. The mechanism for protection is structured as restrictions on local government on engaging in what governing boards deem to be public-purpose communication and/or broadband projects. While one might assume that the bill's target of communications services that deliver broadband and other services "to the public, or any sector of the public, for a fee" would rule out Asheville, this is not necessarily the case. The City of Asheville owns and operates assets that support a public safety radio system, a critical need for our officers in the field. Over the lifetime of the communications system, the City has leased surplus communications system assets to the private sector in order to underwrite a cost savings plan for the operations of the system, thus saving citizens from an additional tax burden.

Restrictions of the bills include limiting permanent or temporary subsidy of a broadband enterprise fund by other enterprise funds, as well as making cities liable for taxes that, normally, only private telecommunications corporations would have to pay. The bills state that cities "shall not subsidize provision of communications services with funds from any noncommunications service", and would rule out a private/public partnership (such as a potential partnership with Google Fiber) or grant funding (such as ARRA or other Federal funding). Such restrictions would significantly harm Asheville.

The restrictions also forbid the financing or leasing of real property (which could be rights-of-ways for a communication network or tower sites) per NCGS 160A-19 and 160A-20. Asheville's ability to build new public safety telecommunications towers, or relocate them, would be affected. Finally, the bills apply these restrictions to interlocal agreements. While the bills exempt facilities that are "within the city's jurisdictional boundaries for the city's internal governmental purposes," it is not always clear-cut what an "internal governmental purpose" is, and whether a city that partners with a county or other local government would be subject to these restrictions. It is worth noting that not all of the City of Asheville's critical public safety telecommunications towers are within the City's jurisdictional boundaries.

Other Feedback to Bills

Sources such as the Southeastern Telecommunications Officers and Advisors Association (SEATOA), a coalition of state and local telecommunications workers, have stated that these bills will harm public safety networks. They say, "public safety networks are typically regional communication networks of Counties, Cities, and Towns who pay fees and receive federal grants to cover operational costs. This bill would shut them down by limiting their service

areas and imposing restrictive rate-setting and financial limitations; it will also make them ineligible for Homeland Security, ARRA and Farm grants."

The NC League of Municipalities states, "both of these bills are designed to restrict the ability of cities to own and operate cable, video programming, telecommunications, and broadband services. The League is opposed to the legislation."

Telecommunications industry leaders and trade associations have also spoken out against the bills.

While Asheville does not have any current plans to pursue municipal broadband, these bills may have unintended consequences that could impact operations or cause fiscal harm. Given Asheville's recent experiences with legislation with unintended consequences that caused significant potential expenses and led to the loss of a critical public safety asset valued at $4.5M in today's dollars to rebuild (Video Service Competition Act of 2006), staff recommends that this legislation be opposed.

These bills could have a negative fiscal impact in two ways. First, the City's ability to accept grant dollars or engage in communication system interlocal agreements would likely be negatively impacted because of the City's practice of underwriting public safety communications expense with leases to the private sector. Second, if City Council wished to engage in broadband economic development activities to boost the tax base, such as a public-private partnership to build a high speed broadband system similar to Google Fiber, such an action would be significantly more difficult to accomplish than it is today.

City staff recommends City Council adopt a resolution opposing House Bill 129 and Senate Bill 87.

**RESOLUTION BOOK NO. 33 – PAGE 357**

**F. RESOLUTION NO. 11-49 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A COMPREHENSIVE ANTI-GANG STRATEGIES AND PROGRAM GRANT FROM THE OFFICE OF JUVENILE JUSTICE DELINQUENCY PREVENTION OF THE U.S. DEPT. OF JUSTICE**

Summary: The consideration of a resolution authorizing the City Manager to apply for a 36 month Comprehensive Anti-Gang Strategies and Program grant totaling $750,000 funded by the Office of Juvenile Justice Delinquency Prevention of the U.S. Department of Justice.

In October 2004, elected officials, City staff and Asheville citizens mobilized to develop comprehensive strategies to address issues of law enforcement, neighborhood restoration, and prevention/intervention/treatment programs and activities in the West Riverside area of Asheville as part of a Weed and Seed initiative. The strategy was introduced to the community, via a series of public meetings, to determine the concerns of residents of the targeted area. The strategy was favorably received with the understanding that residents would be integrally involved in the planning and implementation of the initiative. In July 2006, the U.S. Department of Justice announced the designation of Asheville as an "Officially Recognized" site for the federal Weed and Seed initiative aimed at reducing crime and improving quality of life. Official recognition made the City of Asheville eligible to apply for Weed and Seed funds once a year over a five year period. The last funding award was accepted by the Council on November 9, 2010.

Crime data collected over the last 3.5 years suggests the initiative is having an impact in the targeted area. This grant would allow the City of Asheville to expand the success and coverage of Weed and Seed goals into areas experiencing higher crime. This program creates greater access to the law enforcement community with the intent of building stronger relationships based upon mutual trust. The use of funds would enhance existing evidence-based gang

prevention, intervention, and suppression programs such as: Gang Resistance Training for both youth and families, Truancy Intervention Court for Asheville City School District students, direct suppression of violent group or gang related crime, and Police Activities League programming. Organizations, agencies, and programs, will work in partnership to deliver complementary services to at risk or gang-involved youth. Proposed activities meet many of the needs identified by Weed and Seed, Changing Together, RICH Task Force, Ready by 21, Listening to our Teens Network, Asheville Police Department crime data and Western Carolina Gang Task Force.

This action complies with the City Council Strategic Operating Plan in the "Safe Focus Area" goal. It make Asheville the safest city in America based on approved metrics for similarly sized cities, continue community policing initiatives; support recreation and employment alternatives for youth at risk of gang exposure

Pros:

- Continue to address violent group and gang related crime in affected areas
- Increases and expands community policing efforts
- Enhances existing proven gang prevention, intervention, and suppression programs.
- Program works with community resources to affect change
- Provides a comprehensive crime prevention plan to address law enforcement and prevention/intervention programs for at-risk or gang-involved youth in high crime areas.

Con:

- Some resistance to change by the residents who live in the target areas.

The City of Asheville will be positively impacted in the amount of $750,000 by accepting federal funds available through the grant if awarded. No local matching funds required.

City staff recommends City Council adopt the resolution authorizing the City Manager to apply for the Fiscal Year 2011 Comprehensive Anti-Gang Strategies and Program grant funded by the Office of Juvenile Justice Delinquency Prevention of the U.S. Department of Justice.

**RESOLUTION BOOK NO. 33 – PAGE 358**

**G. ORDINANCE NO. 3951 - BUDGET AMENDMENT TO USE FEDERAL HIGHWAY INTENSITY DRUG TRAFFICKING AREA FUNDS**

Summary: The consideration of a budget amendment, in the amount of $300,000, to authorize the use of Federal High Intensity Drug Trafficking Area (HIDTA) Funds to purchase equipment and fund personnel costs and training for members of the Asheville HIDTA.

The High Intensity Drug Trafficking Areas (HIDTA) program was authorized by the Anti-Drug Abuse Act of 1988 and is administered by the Office of National Drug Control Policy. The original designation of five HIDTA sites in 1990 has expanded into more than thirty areas around the country. The HIDTA's mission is to reduce drug trafficking in the most critical areas of the country, thereby reducing the impact of illegal drugs in other areas. The Asheville HIDTA will serve as a key drug trafficking reduction effort, critically positioned between the Atlanta HIDTA and the Appalachia HIDTA. The Asheville HIDTA is comprised of members of the United States Drug Enforcement Administration (DEA), Asheville Police Department, Buncombe County Sheriffs Office, Henderson County Sheriffs Office and McDowell County Sheriffs Office. The Asheville HIDTA has received this $300,000 and ongoing $150,000 annual funding after more than four years of competitive process for the HIDTA designation. The Asheville HIDTA will be a component of the Asheville DEA Task Force. The City of Asheville will serve as the fiscal agent for the Asheville HIDTA. The Asheville HIDTA has received authorization for $300,000 in federal HIDTA funding. This proposed budget amendment would authorize the use of this funding for equipment purchases, personnel costs and training for members of the Asheville HIDTA.

This action conforms to the City Council's Strategic Operating Plan under 1) Fiscal Responsibility in that we are using federal HIDTA monies to enhance the Asheville HIDTA's equipment, personnel and training needs that would otherwise not be funded, and 2) Safe City in that providing the various equipment and training allows the Asheville HIDTA to be more professional and effective in proactively enforcing and preventing illegal drug trafficking.

Pro:

- Federal HIDTA monies to cover the cost of equipment, personnel and training related to reducing illegal drug trafficking in our region.

Con:

- None noted

The increase of $300,000 is for equipment, personnel and training. The City of Asheville will directly receive $150,000, and the remaining $150,000 will be passed through to the Piedmont HIDTA. Accepting these funds is a significant financial benefit to the Asheville HIDTA by allowing the task force to better equip and train the task force employees. There is no impact to the City's General Fund budget.

City staff recommends City Council adopt the budget amendment, in the amount of $300,000, to authorize the use of Federal HIDTA funds to purchase equipment and fund personnel costs and training for the Asheville HIDTA.

**ORDINANCE BOOK NO. 26 – PAGE 458**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Smith moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. UPDATE ON BLOCK AREA REDEVELOPMENT AND FUTURE PERFORMANCE CENTER

Mr. James Baudoin, Director of the Performing Art Center, explained the wonderful economic impact of the proposed Performing Art Center, especially around the surrounding neighborhood. He explained The Block study area. The Center's components will consist of 2,000 theatre seats, a black box studio and a multi-purpose rehearsal room. The site will accommodate mixed use and commercial development. They will continue in the design phase until 2013 which will begin the construction phase. Because of the economic impact, they engaged the Asheville Design Center (ADC) to work with them.

Mr. Chris Joyell, Executive Director of ADC, reviewed the recently issued 73-page report titled "The Block: Expanded Site Analysis and District Design Considerations" is intended to serve as a guiding document for the neighborhood's future. He outlined the shape of The Block and explained the public process.

In establishing the goals for the project, it was emphasized from the outset that the end report is not a plan – it is a tool for planning. Major goals of the project include: (1) empowering residents and businesses in the decision-making process; (2) exploring opportunities to attract investment and leverage community improvements; (3) discovering avenues to reconnect The

Block with the East End Neighborhood and downtown; (4) assisting in the implementation of the Downtown Master Plan; and (5) promoting the idea of community-based considerations for The Block.

The key objective is to meet the demands of growth while preserving the community's historic legacy. Everyone should recognize the significance of balancing development, history, culture and ecology in The Block Area:

- History and Culture – To ensure that the existing historic and cultural integrity of the neighborhood and ecologically significant landscapes are restored.
- Key Places – To recognize key places which have historical, cultural and aesthetic values and strive to preserve them for a lasing foundation of redevelopment.
- Site Analysis – To establish a framework from which successful design considerations can be made.
- Creation of district-wide design coordination for revitalization – To agree that all proposed district development must account for the neighborhood and its users and strive to preserve the integrity of The Block.
- District Design Considerations – To establish design considerations which reflect a sound understanding of initial community goals, and suitable approaches to revitalizing The Block.

The ADC report is provided as a "living document" to be continually shaped through public dialogue and community demands. A balance of development, history, culture and ecology will be a continuing theme. Ongoing attention to sustainable green building practices, creative multi-modal transportation and other factors will inspire a dynamic "live-work-play" community.

The future Performance Center offers a unique opportunity to build the creative economy of Asheville and also have a significant impact on the greater Block area.

On behalf of City Council, Mayor Bellamy thanked Mr. Baudoin and Mr. Joyell for their informative update.

**C. ARTS & CULTURE SUBCOMMITTEE OF DOWNTOWN MASTER PLAN UPDATE**

Project Manager for the Asheville Downtown Master Plan Sasha Vrtunski said that the Arts and Culture Subcommittee wanted to give Council a brief update on their efforts, highlighting the upcoming Asheville Buncombe Creative Sector Summit. Arts are a major economic engine for downtown as well as for our city and larger community. The Strategy 1 of the plan highlighted the importance of strengthening the arts community in Asheville to ensure that it continues to thrive and even grow. As an arts destination, having strong arts organizations are essential to funding and supporting our many arts non-profits, artists and businesses. The Subcommittee is currently concentrating on four items from the Plan: (1) creative sector summit; (2) coordinating arts calendars; (3) exploring Cultural Arts Commission; and (4) creative sector asset map/audit. Many of the other items in the Plan will flow from the summit and the resulting alliance.

Mr. Graham Hackett, Interim Executive Director for the Asheville Arts Council, said that the Downtown Master Plan calls for an "Arts Audit" to be carried out, then to be followed by a summit. The committee carefully considered these steps, and felt strongly that the summit needed to happen first before the audit, or assessment, could be completed. The summit has been planned and will enable the committee to follow up with participants for the assessment. He provided the brief summary of the committee's work.

*Asheville Buncombe Creative Sector Summit*

The Arts and Culture subcommittee has been working over the past four months to put together a summit of creative professionals, leaders of community organizations, and key stakeholders. Asheville-Buncombe's 1st Annual Creative Sector SUMMIT is a 2-day conference bringing these stakeholders together for networking, education, and collaboration.

At the summit, participants will learn about the objectives from the master plan, the Americans for the Arts Economic Impact Study; current City of Asheville programs and resources; Asheville Area Arts Council grants, initiatives, and facilities and the Arts 2 People's Artist Resource Center. Janet Kagan, a nationally known arts advocate, will give the keynote address, "The Role of the Creative Sector in Community and Economic Development". Participants will also take part in break-out sessions. Follow-up will include correspondence articulating the Summits findings, continuing online and in-person forums, and action steps to enhance the Creative Sector's community engagement.

Because the creative sector is an important economic engine for the city and the county, this summit is an important opportunity for community leaders to engage with the arts community to foster its growth. The Arts & Culture subcommittee is encouraging local leaders to attend the summit.

*Artist's Resource Center*

In the Downtown Master Plan, an Artists Resource Center (ARC) was identified as a needed resource for local artists. Arts 2 People has taken the lead on this project and received several grants as well as funds raised through their Lexington Avenue Arts and Fun Festival (LAAFF). Arts 2 People is preparing to open the doors of the Artist Resource Center in the historic YMI Building, in one of the retail suites facing South Market Street. The ARC offers a curriculum of core business management classes geared toward creative professionals. The ARC is designed to support the economic development of the creative sector by enhancing the ability of individual creative entrepreneurs to manage their businesses. Classes will include such topics as bookkeeping, social networking, production issues, marketing and more. Additionally, visitors to ARC can access difficult to afford hardware and software tools, professional development mentoring, networking opportunities and more.

*Arts Calendar*

A smaller working group has been meeting to discuss the need for a centralized arts and events calendar. Although several online calendars already exist (including ExploreAsheville.com and LiveWireAsheville.com), no calendar covers all of the arts disciplines in our area. The primary challenge is to identify an organization with the resources to manage and promote such a calendar. The task force believes that the Creative Sector Summit will be a natural springboard for this kind of collaboration, and therefore has decided to table the calendar discussion until after the Summit.

*Potential Cultural Arts Commission*

Through the discussions of the Arts & Culture subcommittee, it became apparent to committee members that there is not a natural home for the arts and culture in the current city boards and commissions structure. Discussions led to the idea of a Cultural Arts Commission, which would serve to advise City Council on the cultural arts sector of the community. Committee members are still researching other communities' approaches and best practices for supporting the creative sector, and plan to have a proposal to bring forward in the coming months.

On behalf of City Council, Mayor Bellamy thanked the leadership of the Arts & Culture Subcommittee.

**C. QUARTERLY REPORTS**

**Planning & Economic Development Committee**

Councilman Davis, Chairman of the Planning & Economic Development Committee, thanked his fellow Committee members Councilwoman Manheimer and Councilman Smith and City staff. He then updated Council on some major accomplishments during the 2nd quarter of the Committee as follows: (1) Substantive Projects Affected by Permit Extension Act: Planning staff reviewed list of projects affected by Permit Extension Act; (2) Downtown Parking Study, Completed May 2008: Reviewed staff recommendation to update the Downtown Parking Study completed in May 2008 during the month of December, and forwarded to City Council; (3) Further Research on Permitting Telecommunication Towers in Residential Zoning Districts: Reviewed information gathered from other North Carolina municipalities on permitting telecommunication towers in residential zoning districts. Committee directed staff to revise current zoning amendment and present to City Council; (4) Policy Direction for Legislative Agenda and Action Plan: Staff directed to issue RFP for federal representation and gather information from other North Carolina peer cities on best practices for these agreements; (5) Table of Uses: Planning staff outlined changes to UDO necessitated by creation of unified "Table of Permitted Uses;" and (6) Downtown Management Subcommittee for the Downtown Master Plan – Update & Economic Impact Analysis Funding Request: Committee supported recommendation that Council meet the requested funding for economic impact analysis contingent on funding as structured in the staff report; forwarded to City Council.

**Strategic Operating Plan**

Assistant City Manager Jeff Richardson said that the Asheville City Council identified short and long term goals at the January 2010 strategic planning retreat and staff is providing its quarterly updates on progress of the five key focus areas.

City Council has asked City staff to provide quarterly updates on key strategic initiatives associated with the five primary focus areas of the City's Strategic Plan. Staff has tracked projects using performance indicators and measurement through the Fiscal Year 2010-11. Similar to the previous quarter, this update will be presented in the form of a video. In addition, staff provided Council with the Economic Development Key Indicator Report.

He then showed Council a video showing the staff's progress on the key strategic areas for this quarter.

This information is to update City Council on key operational initiatives specific to City Council's Strategic Operating Plan. No action is necessary at this time.

Mayor Bellamy thanked Mr. Richardson for providing the update in a video format. She asked that the Therapeutic Recreation Program be highlighted in the next update. She also thanked the Police Department Gang Suppression Unit for their work in reducing incidences related to gang activities.

**Financial Report**

Director of Administrative Services Lauren Bradley provided Council with a dashboard view of revenue and expenditures. For Fiscal Year budget 2011-12, the outlook remains manageable for continuation budget. The assumptions consist of no property tax increase; no fund balance appropriation; continuation of core services; and savings strategies with a focus on workload metrics.

The executive summary of the City's overall financial position for the fiscal year through December 2010 is as follows:

*Amendments.* The General Fund budget presented in the second quarter report is unchanged from the budget that was presented in the first quarter report. There were no General Fund budget amendments adopted in the second quarter. A summary of the budget changes since July 1 is presented below.

| | |
|---|---|
| Adopted Budget | $ 91,635,962 |
| Health Care Technical Adjustment | (3,553,000) |
| Budget Amendments: | |
| City Hall Repairs* | 450,000 |
| Annexation Revenue & Expenses | 166,757 |
| 12/31/2010 Budget | $ 88,699,719 |

* Fund balance appropriation

*Revenues.* Through December 31, 2010, the City has collected $50,589,353 in General Fund revenue, which represents approximately 57.3% of the total General Fund revenue budget. Staff received property tax data from Buncombe County in January which showed that the FY 2010-11 tax base grew by 0.7%, which is the slowest growth in more than ten years. As a result, staff has revised downward the property tax revenue estimate for the current year. Sales tax revenues are up 3.2% compared to the prior fiscal year and remain on track to meet budget. As noted in the first quarter report, the only major revenue variance to report is in the investment earnings category, where low interest rates will result in lower than anticipated revenues in this category. Overall, staff is currently projecting that *total FY 2010-11 General Fund revenue will come in under budget by $1.2 million.*

*Expenditures.* General Fund expenditures through December 31, 2010 total $42,135,677 or 47.5% of the budget, which is typical for this point in the fiscal year. As noted in the 1st quarter report, staff has implemented several management strategies to curb expenditure growth during the current year in order to address the projected under performance in revenues. *These savings, representing roughly 1% of the overall budget, are expected to come from a combination of strategies that have minimal impact on public services. These strategies include further selective hiring, line item reductions, deferring capital expenses where possible, and seeking opportunities to maximize efficiency in operations.*

*Fund Balance.* The City ended FY 2009-10 with available fund balance of $12.3 million, which equated to 14.2% of FY 2009-10 expenditures. *With implementation of the savings strategies mentioned above, FY 2010-11 expenditures are expected to roughly equal revenues, which means available fund balance will remain at $12.3 million or 14.2% of estimated expenditures.*

In response to Mayor Bellamy, Ms. Bradley gave a general summary of investment earnings and how the City invests.

Mayor Bellamy stated that we are building up Fund Balance, noting that there is no property tax increase proposed.

**D. ECONOMIC STIMULUS PACKAGE UPDATE**

American Recovery & Reinvestment Project Manager Brenda Mills said that the following is part of the City staff's recurring American Recovery & Reinvestment (ARRA) update to Asheville City Council on projects and job creation.

On February 17, 2009, President Barack Obama signed into law the American Recovery and Reinvestment Act (ARRA) of 2009, a bill that included $789 billion in funding for programs and tax relief for the purpose of stimulating the U.S. economy in its current state of recession.

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The recovery measure contained more than $150 billion for public works projects for transportation, energy and technology, and $87 billion to assist states in meeting rising Medicaid costs.

The federal stimulus package provided over 10.5 billion in direct aid to North Carolina to create jobs and rebuild infrastructure, including highways and schools. The recovery program would also inject additional funding into the state through targeted tax cuts, additional grants from federal agencies and direct funding for specific federal programs in the state.

The City of Asheville's funding came from entitlement and grant funding with some grant funding through cooperation with other governmental agencies. The report will provide as much detail on each area of funding and status of the projects approved.

The table below shows the city's funding by entitlement (based on median incomes, crime statistics, population of urbanized area, etc. for funding eligibility) and grants (and sub-grantee awards). Entitlement funding totaled $6,077,152.00 and a receipt of grants in the amount of $1,984,960.00 all total funding in the amount of $8,062,112.00. *For the completed projects and/or those almost complete, we have a count of 16.18 jobs created.* For the surface transportation projects, construction companies typically have general layoffs for the winter so they used their own workforce in the performance of these particular contracts.

The status of projects follows with job creation data as available. Additional information will be available later for projects that have recently started and/or have been delayed in starting at our next report.

| Entitlement Funding | Agency | Amount |
|---|---|---|
| Homeless Prevention Fund | Housing & Urban Development | $509,460 |
| CDBG-R | Housing & Urban Development | $332,942 |
| Energy Efficiency & Conservation Block Grant (EECBG) | Dept. of Energy | $804,700 |
| Edward J. Byrne Justice Assistance (JAG) Grant | Dept. of Justice | $265,466 |
| Transit Capital | Federal Transit Administration | $2,500,000 |
| Surface Transportation (STP-DA) | NC Dept. of Transportation | $1,664,584 |
| **Grant and Sub-Grantee Funding** | **Agency** | **Amount** |
| Drinking Water SRF (NCDENR) | NC Dept of Environmental and Natural Resources | $510,000 |
| Clean Water SRF | NC Dept of Environmental and Natural Resources | $454,500 |
| Mobile Source Emissions | NC Dept. of Air Quality | $30,000 |
| Local Energy Assurance Planning (LEAP) | Dept. of Energy | $209,940 |
| | | |

| | | |
|---|---|---|
| Clean Cities: Carolina Blue Skies & Green Jobs Initiative (Sub-grantee with Triangle J in Raleigh) | Dept. of Energy | $779,020 |
| Summer Internship Grant for Engineering Division | NC Dept. of Health and Human Services (NC DHHS) | $1,500 |

**Community Development Block Grant-R (CDBG-R) - $332,942.00**

- **Tier II Emergency Home Repair ($75,000).** The sub-recipient was Mountain Housing Opportunities (MHO) who performed extensive repair on five homes owned by very-low and low-income, special need households. Maximum investment per home was $15,000. Repairs facilitated enabled weatherization activities to be allowable and effective. This project has a 100% LMI benefit and is complete.

- **Weed and Seed Weatherization Program ($75,000).** The sub-recipient was Western North Carolina Green Building Council (WNCGBC). Funding used to market and facilitate weatherization for 60 low-income households in the West Riverside area of Asheville. WNCGBC partnered with Community Action Opportunities Weatherization program. This project has 100% LMI benefit and is complete awaiting final completion reports from Community Action Opportunities.

- **Mountain BizCapital ($26,000).** Funding used as a revolving loan fund for two micro-businesses. To date, $14,000 expended and this project has 100% LMI benefit.

- **City of Asheville Louisiana Street Phase 1 (Budgeted $123,648).** This project is the construction of sidewalk serving this lower-income neighborhood in the city and is an LMI Area under 570.208(a)(1). It was completed for less cost than original budget with the remainder of funds will be used in Phase 2.

- **City of Asheville ($33,294).** Ten percent allowable for program administration.

- **Job Creation.** To date, *3.37 full time jobs have been created* with this funding.

**Homeless Prevention and Rapid-Rehousing Program (HPRP) - $509,460**

The funding supports the City of Asheville's Homeless Prevention and Rapid Re-Housing Program (HPRP). It is designed to prevent homelessness or rapidly re-house households (individuals and families) who would be homeless, but for, this assistance and who, after the maximum 18 months of support, indicate an ability to maintain housing. The goal of HPRP is that households that would otherwise be homeless will maintain housing or obtain housing as a result of participating in HPRP.

HPRP provides funds for: administration (5%), outreach (3%), housing stabilization for case management and housing location services (24%), financial assistance for arrears, rent, utilities, and some moving costs (57%), legal services (8%), and data collection (4%). No less than 60% of the funds will be used within the first two years of the grant, and 100% of HPRP funds will have been spent at the end of three years.

HPRP provide for HMIS data entry, provide client point-of-entry information and referral services, provide case management/housing stabilization services, evaluate progress of HPRP and provide implementation oversight. Awarded to a joint application, this includes the following local non-profit agencies: Pisgah Legal Services, Western North Carolina Aids Project, United Way's 2-1-1, Eblen Charities and Asheville Buncombe Community Christian Ministry.

To date, for Homelessness Prevention 180 persons and 72 households with this program through December 2010. For Rapid-Rehousing, 91 persons and 44 households have been assisted. *This funding has created 2.32 jobs.*

**Energy Efficiency and Conservation Block Grant (EECBG) - $804,700**

The City of Asheville has implemented energy retrofits to municipal buildings with the completed installation of two solar thermal units, lighting retrofits to city hall and pending upgrades to the HVAC system at the city's civic center complex later this year.

With the funding, the city implemented an education and outreach program for sustainability and is still exploring the use of funds for the establishment of a competitive community sub-grant program for energy efficiency and conservation. We intend on saving at minimum 321,195 BTUs of energy and 26,084 tons of green house gas emissions. *This funding has created 3.89 full time jobs.*

**Local Energy Assurance Planning (LEAP) Grant - $209,940**

This initiative funding will focus on building regional energy assurance capability to allow the region *(23 cities and counties participating)* to better coordinate and communicate local and state-wide on energy security, reliability, and emergency response issues. The objectives of this initiative are to: (1) strengthen and expand local government energy assurance planning and resiliency, (2) reduce the impacts from energy supply disruptions, and (3) create jobs and save jobs in energy assurance planning at the city level. The City of Asheville is contracting with the Land of Sky Regional Council to provide oversight and regional planning for this grant. *This funding has created one job for a LEAP Regional Planner who began August 2010.*

To date, there is a timeline of actions for this planning, the regional partners are meeting and now working on a template for their individual plans and a website has been created for the regional partners as a tool for their planning needs. A survey is being finalized to find the baseline for all participating agencies. Work Groups for conservation and acquisition have been created and will begin meeting mid-February.

City staff and the LEAP Regional Planner participate in quarterly regional calls through the Public Technology Institute (PTI) with LEAP grantees across the country.

**Transit Capital ($2,590,439)**

The City of Asheville shares this funding with Henderson County, NC ($585,841) since being reclassified as an urbanized area as part of the 2000 Census. The City of Asheville will use its funding to purchase five (5) clean diesel buses and ten (10) bus shelters and Henderson County is purchasing two CNG buses and one CNG Van.

To date, bid out ten (10) shelters and have received and getting ready to install three. The specifications for the buses are being developed and the bid will be release in the next 30 days.

**Edward J. Byrne Justice Assistance Grant - Awarded $372,630**

Funding shared through a memorandum of understanding with Buncombe County, North Carolina with their portion being $107,164. The city's funding ($265,466) will be combined with budgeted city funds to upgrade and install a key card access and camera security system for the Municipal Building, Asheville Police Dept. Firing Range, Public Works and City Hall areas.

City Council approved change in contract to RHS at your regular meeting on November 9, 2010. Project began late December 2010. Information Technology Department is currently working with vendor to identify needs in the Municipal and City Hall Buildings.

**NC Department of Transportation ($1.2 million):**

City managed five (5) projects with this funding which will have the following outcomes and impact:

1. Paving and creating bicycle lanes with the *Coxe Avenue/South Slope Milling, Paving, Re-striping Project.* Project completed at a cost of *$203,234.30.*

2. *Downtown Asheville Corridor Enhancements Project* involves new plantings and tree replacements in the downtown area. Project completed at a cost of *$75,447.16.*

3. Improved pedestrian safety will be the result of the Signal upgrades, *Fairview Road at Onteora Boulevard/Baldwin Street Project.* Project completed at a cost of *$58,814.14.*

4. The *Kimberly Avenue Re-surfacing and Re-Striping Project* will provide a new asphalt surface in this area from Evelyn Place to Gracelyn Road. Project completed at a cost of *$475,151.35.*

5. The *Asheville Sidewalk Improvements Project* will close gaps in the existing city of Asheville sidewalk system. Project 85% complete with spending at *$310,077.77.* Resumed project this week with change in weather.

**NC Department of Environmental and Natural Resources (NCDENR)**

- **Drinking Water State Revolving Loan ($510,000)**
  Funds used on the North Fork Pumping Systems which went into service the first week of October. The city will be provided formal training and manuals by the contractor, Hickory Construction. This upgrade reduces the power consumption at the North Fork Water Treatment Plant by 80% (94k W instantaneous or 2200kW/h per day). There should be some savings in chemical usage as well. *There were 3.8 jobs created in the third quarter 2010.* Project completed with approval of the City Council for a change order to increase the contract in the amount of $3,161.00 to accommodate: (1) additional conduit and handholes to the North Fork WTP front gate and (2) the lack of existing wiring at the pump skids. Total cost of the project is under the loan amount at *$331,635.00.*

- **Clean Water State Revolving Loan ($454,500)**
  Funds used to apply to the master plan for the Dingle Creek Watershed with a final cost of the project of *$260,964.* The project created one acre of stormwater wetland which will treat storms up to the 10-year return period and will help reduce flows in the existing creek channel and settle out sediment and nutrients while reducing the temperature of the water. It will stabilize the existing channel. The project treats and improves the quality of the runoff produced by the bulk of the Dingle Creek Watershed. *Funding for this project created 1.8 FTEs.*

**Carolina Blue Skies Green Jobs Funding ($779,020)**

These funds will allow the city to increase capacity of the current Compressed Natural Gas (CNG) Station, convert 11 current fleet vehicles to CNG and purchase and upgrade 11 vehicles to CNG. The current status of the funding is as follows:

- Hiring of a project manager to oversee CNG station upgrade which will begin in March and projected for completion in summer 2011.
- The first round of vehicle retrofits will begin in April.
- The second and last round of vehicle retrofits will occur next fall.

**NC Division of Air Quality (Emissions Grant) - ($30,000)**

These funds are being used to pay for the incremental cost to use biodiesel fuels for our Public Works fleet.

**NC Department of Health & Human Resources (NCDHHS) - ($1,500)**

Provided for a summer intern for the Engineering Division to support research and project assistance.

There are no current changes to fiscal impact of any of the ARRA projects approved by City Council. We are continuing to have work completed under budget and on schedule.

City Manager Jackson made it clear that the $8 Million in ARRA funds are not being used to balance the budget, but to address strategic goals and capital improvement projects. This has been an excellent supplement for our programs.

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING TO CONSIDER CLOSING SEVERAL PORTIONS OF UNOPENED RIGHTS-OF-WAY AND CITY STREETS WITHIN THE MONTFORD COMMONS DEVELOPMENT AREA

Mayor Bellamy opened the public hearing at 6:19 p.m.

Assistant Public Works Director David Foster said that this is the consideration of a resolution of to permanently close several portions of unopened rights of way and City streets within the Montford Commons Development area, which includes: an unopened portion of Woodside Place; an unopened unnamed right of way between Gudger Street and the unopened portion of Woodside Place; an unopened portion of Bay Street; all of the unopened portion of Jason Street and a portion of City maintained Jason Street; all of City maintained Michael Street; and all of the unopened unnamed right of way located near Jason Street. This public hearing was advertised on January 28, February 4, February 11 and February 18, 2011. On February 22, 2011, City Council approved a continuance to this date, at the request of the applicant.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjoining property owners, Frontier Syndicate LLC; Rhesa Read Tull Jr., Dorothy Tull Mothershead, and Margaret Tull Davis (heirs of G. Farrar Parker) have requested the City of Asheville to permanently close several portions of unopened rights of way and City streets within the Montford Commons Development area, which includes: an unopened portion of Woodside Place; an unopened unnamed right of way between Gudger Street and the unopened portion of Woodside Place; an unopened portion of Bay Street; all of the unopened portion of Jason Street and a portion of City maintained Jason Street; all of City maintained Michael Street; and all of the unopened unnamed right of way located near Jason Street.

Adjacent property owner Asheville City Schools did not join the request to permanently close several portions of unopened rights of way and City streets within the Montford Commons Development area and were advised by certified letter returned receipt. Asheville City Schools did not respond.

Dana Parker contacted the City of Asheville as a part property owner along with Rhesa Read Tull Jr., Dorothy Tull Mothershead, and Margaret Tull Davis (all heirs of G. Farrar Parker) stating she is against permanently closing several portions of unopened rights of way and City streets within the Montford Commons Development area as she would not be afforded ingress and regress to her property. Information provided by the applicant indicates there is access to her property from an unopened right of way, not included in the closure area.

The Greenway Commission met on November 11, 2010. They voted unanimously to support the street closures and strongly recommended that any future development plan include the greenway connection as discussed in the site master plan.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use. The Strategic Plan Goals most closely aligned with the Montford Commons Development closure requests is the Job Growth and Community Development Goal in that it will provide sustainable high density infill growth that makes efficient use of existing resources.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties
- Meets Council's goals to promote sustainable high density infill growth that makes efficient use of existing resources

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of to permanently close several portions of unopened rights of way and City streets within the Montford Commons area.

Ms. Dana Parker, one of the four heirs of the G. Farrar Parker parcel, was not opposed to the development, but was opposed to closing the 51 foot road access to her property. He developer wants to close her current access and give her only 15-feet access from the rear of her property, which is also a ravine. In addition, the proposed access is only 35 feet from the entrance to a school. The plan also shows the developer's building on her property. She spoke with the developer and he explained that he would resubmit a new plan for approval which did not include her property. She suggested that the new plan allow her the same driveway option she currently has, which will tie her road into the front entrance of his development on Hill Street. She also noted that prior to the title search, the other 3 heirs signed the purchase contract, but during the title search it was discovered that she was also an heir. The developer then contacted her about selling the property but they have not come to an agreement at this time.

Mayor Bellamy closed the public hearing at 6:26 p.m.

In response to Councilman Bothwell, City Attorney Oast said that that it must appear to the satisfaction of Council that no individual owning property in the vicinity of the street or alley or subdivision would be deprived of reasonable means of ingress and egress to his property. He felt that as long as some satisfactory alternative access was available, then Council could close the road.

In response to Councilwoman Manheimer, Mr. Foster noted that both the proposed and existing access are only platted roadways.

In response to Councilwoman Manheimer, Mr. Foster said that the when the developer first requested the City to close the streets, they were under the impression that all the adjacent property owners were in agreement with the closure. He even had a signed contract to purchase the subject property. Then the title search revealed another heir to the subject property.

When Ms. Manheimer asked if there were any other adjacent parcels of land to the road closures that are not owned by the developer, Mr. Foster believed they are, but none directly in the development area.

In response to Councilman Russell regarding a time issue, Mr. George Gabler, representing Frontier Syndicate, said that they have been expecting to hear about their HUD funding by now. They cannot get funding for the project on a piece of land they don't own. They have acted in good faith in that they thought they had a valid contract, noting it was their title search that showed another heir. They did notify her and they hope to get to an arrangement to buy the land. If they do not, they will have to redesign a corner of their building. He did note that the roads do not exist in any meaningful way.

In response to Councilwoman Manheimer, Ms. Parker said she is 50% owner and the other three heirs own 16.6% respectively.

When Councilman Russell asked if staff has looked at the proposed access to see if it was reasonable, Mr. Foster said they have not looked at it from that prospective, but they did make sure the property was not land-locked.

In response to Vice-Mayor Newman, Mr. Gabler said that according to their surveyor, there is adequate access to the parcel.

After a short discussion and in hopes for the parties to reach a solution, Councilman Russell moved to continue this matter until April 12, 2011, with the following information being presented at that time (1) staff to identify the parcels not owned by the developer with reference to notification and if they are not a parcel to be purchased how will it be accessed or maintained or if the parcel is under contract; and (2) surveyor or engineer's explanation of the adequacy of access. This motion was seconded by Councilman Bothwell and carried unanimously.

**V. UNFINISHED BUSINESS:**

**A. RESOLUTION NO. 11-50 - RESOLUTION AMENDING THE TRANSFORMATIONAL DEVELOPMENT PROJECTS INCENTIVE POLICY (LAND USE INCENTIVE POLICY) FOR THE CITY OF ASHEVILLE**

Mayor Bellamy said that on February 22, 2011, City Council continued this matter to this date at the request of the Housing & Community Development Committee.

Planning & Development Director Judy Daniel said that this is the consideration of revised elements proposed by the Sustainability Advisory Committee for Energy and the Environment for the Transformational Development Projects Incentive Policy adopted in November 2010.

In November, the Asheville City Council adopted a new "Transformational Development Policy", designed to assist development of projects that meet certain important goals set by the Council that are facing financing constraints. The Council deferred implementation of the new Policy until they had heard comments from the Sustainable Advisory Committee on Energy and the Environment (SACEE) regarding the "green" elements of the policy.

In January, the SACEE report was presented to the City Council. The report contained a number of recommendations, and went somewhat beyond the scope originally requested by the

Council. After discussion, the Council asked the staff and SACEE for some additional information, and for the recommended changes to be considered by other interested groups as well; and to report back to the Council on February 22.

The Council also requested that staff provide a copy of the Policy indicating where the requested modifications were to be inserted.

In response to the request for added input, the staff gave a review of the proposed modifications to the Council of Independent Business Owners (CIBO) on Friday, February 11. There were a number of comments, all generally stating that any changes to restrict the Council in awarding these grants should be avoided. There were also comments expressing that open space was already required in the Unified Development Ordinance (UDO), and there were already enough supports for energy saving elements.

The staff also gave a presentation on the proposed changes to the Downtown Commission on Friday, February 11. They generally reflected the same sentiments as heard at CIBO, indicating a preference for a less restrictive policy.

The staff gave a similar review to the Coalition of Asheville Neighborhoods (CAN) on Monday evening, February 14. That group was generally in support of the modifications. The prevailing sentiment was that if tax revenues were to be affected for any length of time, the incentive should be narrowly focused toward projects that meet multiple Council goals.

The staff also sent a copy of the Policy and suggested changes to the Economic Development Council. To date, no response has been received.

The staff presented the Policy and suggested changes to the River Development Commission.

Vice-Mayor Newman said that the Housing & Community Development Committee, and others, discussed this policy and based on those discussions, he provided Council with a proposed revised Land Use Incentive Policy. Said policy reads:

"Every 10 points earn one year of economic incentive (i.e., equivalent to property taxes for one year). Every 10 points earns a 10% reduction in the following fees and charges: Zoning Permit, Building Permit, Driveway, Grading Permit, Plan review fees and Water service connection fee. Required elements (these are the same as the current policy except with Energy Star certification):

- Energy Star Certification
- Inside city limits, within 1/8 mile of a major highway
- Assume legal costs if challenged
- 20% equity participation by party requesting incentive
- Residential units sold as condos must be primary residence of occupants for the life of the incentive.

| Public Benefit Element | Points |
|---|---|
| **Green Building/Energy** | |
| Energy Star Certified | 5 |
| Leed Bronze or HB Silver | 10 |
| Leed Silver or HB Gold | 20 |
| Leed Gold or HB Platinum | 30 |
| Leed Platinum | 40 |

**Affordable Housing** – For rental projects, just agree to 10 year affordability criteria for rents at 80% of area medium income.

| | |
|---|---|
| 10%+affordable | 10 |
| 20%+affordable | 20 |
| 30%+affordable | 30 |
| 40%+affordable | 40 |

**Workforce Housing** – Must agree to 10 year affordability criteria for rents at 120% of area medium income.

| | |
|---|---|
| 25%+workforce | 5 |
| 50%+workforce | 10 |
| 75%+workforce | 15 |

**Mixed Use and Location**

| | |
|---|---|
| Includes a minimum 20% non-residential | 5 |
| Within the Sustainability Bonus area | 5 |
| Brownfield Redevelopment | 5" |

Vice-Mayor Newman moved to adopt the Transformational Development Projects Incentive Policy (now to be called the Land Use Incentive Policy) just presented. This motion was seconded by Councilman Bothwell.

When Mayor Bellamy asked for comments, no one spoke.

At Councilwoman Manheimer's request after a brief discussion, Vice-Mayor Newman agreed to amend his motion to delete the required element entitled "residential units sold as condos must be primary residence of occupants for the life of the incentive." Councilman Bothwell agreed to the amendment as well.

In response to Councilman Russell regarding whether the policy Council adopted in November, 2010 is effective, City Attorney Oast said that when Council considered the policy, it was subject to revisions regarding green and sustainable practices. He understands that to mean that the policy has not been finalized. The vote at that time was 4-3, with Councilman Bothwell, Councilman Davis and Councilman Russell voting "no."

While responding to various questions from Council, Vice-Mayor Newman stated that this revised policy contains clear, objective criteria.

At Councilman Davis' request, Vice-Mayor Newman and Councilman Bothwell agreed to revise the amended motion that this policy be revisited in one year at which time staff is to evaluate the metrics set in the policy to see if they are too aggressive or not aggressive enough to achieve the public policy.

Councilwoman Manheimer clarified that the motion would also include that one of the required elements be the same as in the November policy (which was inside city limits, within ¼ of a mile of a major highway), that this policy would replace the November policy in its entirety, and that the policy would be effective upon adoption by Council.

It was Council's understanding, at Mayor Bellamy's clarification, that this Land Use Incentive Policy is separate from the fee rebate program for affordable housing.

Upon inquiry of Vice-Mayor Newman, Ms. Daniel said that this policy will be easier for staff to work with as it contains clear criteria.

The following amended motion made by Vicé-Mayor Newman and seconded by Councilman Bothwell and carried on a 6-1 vote, with Councilman Russell voting "no": (1) to delete the required element entitled "residential units sold as condos must be primary residence of

occupants for the life of the incentive"; (2) that the policy be revisited in one year at which time staff is to evaluate the metrics set in the policy to see if they are too aggressive or not aggressive enough to achieve the public policy; (3) revise one of the required elements to read "inside city limits, within ¼ of a mile of a major highway"; (4) policy would replace the November policy in its entirety; and (5) policy would be effective upon adoption by Council.

**RESOLUTION BOOK NO. 33 – PAGE 359**

**B. DISCUSSION OF EARLY VOTING SITES FOR 2011 CITY COUNCIL ELECTION**

Mayor Bellamy said that the Buncombe County Board of Elections is in the process of preparing their budget for 2011-12 and has asked if City Council will want early voting sites for their election this year.

At the February 8, 2011, City Council meeting, City Council asked for additional information to determine if they will request the Buncombe County Board of Elections to prepare for early voting sites for their election this year. That requested information is below: (1) In 2007, 1,061 people early voted at the Board of Elections Office on College Street; (2) In 2009, 1,349 people early voted at the Board of Elections Office on College Street; (3) In 2009, 2,008 people voted in the four additional early voting locations; and (4) Asheville-Buncombe Technical Community College will pay for the costs that can be attributed to their election (extra precincts that are needed, any extra workers, and for the coding and ballot costs for their election).

The following information was also available to assist Council in their decision: (1) In 2009, City Council requested by Buncombe County Board of Elections to add four additional early voting locations one week before the general election on November 3, 2009. They were located at Parks & Recreation on Gashes Creek Road, North Asheville Branch Library, West Asheville Branch Library and South Buncombe Branch Library. Out of the total cost for the November election ($122,786), approximately $39,406 were costs associated with the early voting sites. This is a conservative estimate. There were 3,357 City voters who took advantage of the early voting sites; (2) The City of Asheville will have 37 normal polling places in October and then again in November. If remote sites are opened in November, the Board of Elections will have to provide ballots for all voters for all municipalities, per the State Board of Elections; (3) The City must notify the Board of Elections 90 days before the election in order for them to submit a plan of implementation to the State Board of Elections for approval. Generally, the sooner we let the Board of Elections know about remote sites the better; (4) While the Board of Elections will certainly aim to provide the desired location for the one-stop sites, ultimately the final specific decision lies with the County Board of Elections and the State Board of Elections. Many factors have to be considered in these decisions; (5) Citizens will indeed always have the opportunity to vote early at the downtown office at 35 Woodfin Street for the full time period; and (6) A cost guideline would be $1,000 per day per site. This is an estimate since there are many line items that are significantly affected by the number of sites opened, i.e., training, advertising, travel, number of employees, overtime, etc.

Councilman Smith felt it would be good to have some early voting so we can see if there is a trend.

Due to the economy, Councilman Russell moved to not provide additional early voting sites, other than the one on College Street. This motion was seconded by Councilman Davis.

When Mayor Bellamy asked for public comment, no one spoke.

Vice-Mayor Newman felt we have seen an enormous growth in early voting in North Carolina and has noticed upward trends in people voting.

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The motion made by Councilman Russell and seconded by Councilman Davis failed on a 3-4 vote, with Vice-Mayor Newman, Councilman Bothwell, Councilwoman Manheimer and Councilman Smith voting "no."

Vice-Mayor Newman moved to request the Buncombe County Board of Elections add four additional early voting locations six days before the general election in the north, south, west and east areas. This motion was seconded by Councilman Bothwell.

Vice-Mayor Newman withdrew his motion in order to get additional information from the Board of Elections. Said information includes: (1) Why is there a discrepancy of 4 additional early voting sites one week early (cost guideline is $1,000 a day for 6 days = $6,000) x 4 = $24,000 vs. the approximate $39,406 costs associated with the additional early voting sites; (2) Does the City of Asheville pay for the early voting site on College Street; (3) Was any of the 4 additional voting sites open on Saturdays, and if so, how many people voted early on Saturdays in 2009 at the 4 additional sites; (4) Was the College Street site open on Saturdays, and if so how many people voted early at that site in 2009; (5) How many people voted in the 2009 election; and (6) How many people voted in the 2007 election (not counting early voting at the Board of Elections Office).

It was the consensus of Council to have additional information provided to Council for the April 12, 2011, meeting.

**C. RESOLUTION NO. 11-50 – RESOLUTION SUPPORTING FULL FUNDING FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

Community Development Director Jeff Staudinger said that the Community Development Block Grant (CDBG) funding is in danger of deep cuts that if adopted would reduce grants this year by two-thirds, and result in staff cuts. Elected official around the country are strongly advocating for the continuation of this program, and preparing for a similar situation for Fiscal Year 2012.

The federal budget for this current year has not yet been adopted. The government has been operating since October of 2010 on a Continuing Resolution (CR), scheduled to expire on March 4. The House passed a new spending bill- H.R. 1- to fund the government for the rest of this year. It proposes funding CDBG for only that portion of this federal fiscal year that has already passed- essentially eliminating the CDBG program (62.5% cut from last year's funding, from $3.99 billion to $1.5 billion). H.R. 1 also contains a provision to eliminate any unobligated ARRA funding (CDBG-R included). It also contains a provision to rescind all Sustainable Communities funding, which would eliminate funding for our TIGER II Planning Grant and the Regional Sustainable Communities Planning Grant awarded to Land of Sky Regional Council. Representative Shuler voted against the House-adopted Continuing Resolution.

We will likely see a short-term CR passed, of uncertain duration, to allow for time for House-Senate negotiations for a funding bill for the rest of this year. That short-term CR will probably include $4 billion domestic spending cuts, and be a harbinger for additional domestic discretionary spending reductions for this federal fiscal year, that is now almost half completed.

The Senate is likely to agree to something approaching that level of short-term cuts in order to avoid a government shut down on March 5. Looking at the challenge ahead to pass a budget for the remainder of this year, Senate Democrats have endorsed the President's five-year discretionary spending freeze – signaling that some deep cuts are on the way. Republicans will push the Senate to embrace the grand total of cuts approved by the House, but not necessarily line-for-line every cut approved by the House. In every case, CDBG is at risk of significant cuts.

He provided Council with a fact sheet which goes into further detail of the accomplishments of CDBG within our community over the past five years. CDBG provides the

flexibility to fund a myriad of activities, fill gaps where needed, and leverage and attract additional resources to projects. This combination of CDBG with other resources adds to our local economy through the purchase of goods and services and adds to the betterment of the lives of our local citizenry through improved neighborhoods and lives.

We are now in the midst of our federal Fiscal Year 2011 funding process, and staff is reviewing 24 CDBG applications requesting $2.3 million in funding from the agencies that provide affordable housing, homelessness intervention and prevention, small business development, financial literacy, emergency home repairs. The services offered through CDBG affect thousands of Asheville residents. If last year's allocation were cut by 63%, we would have about $500,000 to distribute in grants, and about $100,000 for staffing. One of the most effective tools the City has to help reach its strategic goals would essentially be eliminated.

According to staff from national membership organizations such as the National Community Development Association, the US Conference of Mayors and the National League of Municipalities, Senators want to hear from people who will be directly affected by cuts to the program. These organizations consider it to be extremely urgent that we communicate with our Senators as soon as possible.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities, urged Council to strongly support the CDBG funding.

Councilwoman Manheimer moved to adopt a resolution supporting full funding for the Community Development Block Grant funding. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Councilman Russell voting "no."

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**Closed Session**

At 7:30 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 8:01 p.m., Councilman Russell moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

## VI. NEW BUSINESS:

### A. ORDINANCE AMENDMENT TO REQUIRE PAWNBROKERS AND SECOND-HAND DEALERS TO SUBMIT THEIR DAILY PAWN AND/OR PURCHASE TRANSACTIONS TO THE ASHEVILLE POLICE DEPARTMENT ELECTRONICALLY

Assistant City Attorney Kelly Whitlock said that this is the consideration of an amendment to the City's pawnbroker ordinance which would require pawnbrokers and second-hand dealers to submit their daily pawn and/or purchase transactions to the Asheville Police Department (herein "APD") electronically.

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Currently, the City's ordinance, in accordance with state law, requires pawnbrokers to maintain records of every pawn and/or purchase transaction and have them available for inspection and pickup each workday by APD. Pawnbrokers are required to record the following information: 1) a clear and accurate description of the property 2) the name, residence address, phone number and date of birth of pledgor; 3) the date of the pawn transaction; 4) the type of identification and the identification number accepted by the pledgor; 5) the description of the pledgor, including approximate height, weight, sex and race 6) the amount of money advanced 7) the date due and the amount due; 8) all monthly pawn charges 9) the agreed-upon stated value between the pledgor and the pawnbroker.

Secondary metals recyclers and precious metal dealers are also required, pursuant to state law, to maintain records of all purchase transactions for inspection by law enforcement.

The current process of paper reporting is tedious and both resource and labor-intensive. Currently, an investigator from APD physically retrieves the paper records on a bi-monthly basis. Thereafter, the paper records are manually entered into a database which is often back-logged. This results in out-of-date information and impedes the prompt resolution of property crime cases. Requiring pawnbrokers, secondary metals recyclers and precious metal dealers to report their pawn and/or purchase transactions electronically will provide investigators with access to up-to-date information during the course of an investigation. Not only will electronic reporting assist law enforcement, it will also provide these businesses with a more user-friendly and efficient means of reporting.

In addition to the issues stated above, the current ordinance has also created an unintended loophole. Criminals selling stolen goods can evade detection simply by avoiding pawn shops since pawnshops are required to maintain records of each pawn and/or purchase transactions for inspection by law enforcement. Many property crimes are left unsolved as a result of criminals selling stolen items at second-hand stores that are not required to maintain records of their purchase transactions of second-hand goods and report them to APD (i.e. consignment shops, antique dealers, EBAY stores, cash converter stores, used record/video game stores, used sporting goods stores, and used musical equipment stores). Requiring these "other" types of second-hand dealers to submit their purchase transactions electronically to APD will assist in closing this substantial loophole.

The proposed changes are (1) to have pawnbrokers, secondary metal recyclers, precious metal dealers and other second-hand dealers will submit their pawn/purchase transactions of second-hand goods to APD electronically; and (2) submit no later than 48 hours of the transaction.

Currently, APD subscribes to LeadsOnline and approximately 18 businesses in the City voluntarily use it to report their pawn and/or purchase transactions. LeadsOnline is the nation's largest online investigation system for law enforcement regarding missing property, providing rapid electronic access to transactions of reporting businesses. APD pays an annual subscription to use LeadsOnline and reporting businesses are provided the service free of charge. Only authorized law enforcement personnel investigating property crimes may access data on the LeadsOnline system.

On November 16, 2010, APD discussed the potential changes to the ordinance with the Asheville Public Safety Committee. Upon review, the Committee made a motion to approve the amendments to the ordinance, contingent upon further input from the community.

On December 13, 2010, APD conducted an informational meeting in order to provide details to the public about the potential changes to the ordinance and the process of reporting electronically via LeadsOnline.

On February 15, 2011, APD addressed before the Public Safety Committee the pros and cons of implementing a monetary threshold (i.e. exempting second-hand goods that fell below a monetary threshold from the reporting requirement).

The following changes have been incorporated into the proposed ordinance:

1. Requiring pawnbrokers, secondary metal recyclers and precious metal dealers to submit their pawn and/or purchase transactions to APD electronically.

2. Requiring pawnbrokers to hold any goods pledged, pawned, or purchased for 7 days to conform to state law requirements.

3. Requiring "other" second-hand dealers to submit their purchase transactions of second-hand goods to APD electronically.

    a. Defining second-hand dealers as: any person, sole proprietorship, partnership, joint venture, corporation, company, association or any other form of organization whose regular business is buying, selling, bartering, exchanging, or accepting for sale on consignment, in any manner, at retail or wholesale, or otherwise dealing for profit in, second-hand goods.

    b. Defining second-hand goods as: tangible personal property from the public previously used, rented, owned or leased (excluding property required to be registered by the NCDOT- Division of Motor Vehicles, clothing, shoes, books, and animals).

    c. Exempting the following businesses/persons from the definition of second-hand dealers:

        i) A person or business whose only business transactions with second-hand goods in the City consist exclusively of donated items and/or purchases from 501(c)(3) organizations; or

        ii) A person or business whose only business transactions with second-hand goods in the City consist of the sale of personal property acquired for household or other personal use such as garage sales, yard sales, estate sales and/or auctions held by a licensed auctioneer; or

        iii) A person or business whose only business transactions with second-hand goods in the City consist of a display space, booth or table maintained for displaying or selling merchandise at any trade show, convention, festival, fair, flea market, swap meet or similar event that is not in a fixed location unless otherwise regulated under N.C.G.S. § 66-11 (regulated metals) or N.C.G.S. §66-163 et seq. (regulated precious metals)

- Examples of second-hand dealers include physical EBAY stores, consignment shops (non-clothing items), antique dealers, used record and video game stores, used sporting goods stores, used musical equipment stores and cash converter stores.

The City's ordinance will be effective April 15, 2011.

This action complies with the City Council Strategic Operating Plan in the focus area of "safe".

Pros:

- Assists APD in the prompt resolution of property crimes
- Assists APD in locating wanted/missing persons
- Provides a more user-friendly and efficient means of reporting for pawnbrokers, secondary metal recyclers, and precious metal dealers
- Less resource and labor-intensive for APD than the current process of paper reporting
- Does not significantly interrupt daily business transactions or subject customers to inconvenience
- Service is provided free-of-charge to reporting businesses
- Free on-line support service

Cons:

- Requires access to a computer with internet connection
- Transition to data entry for pawnbrokers, scrap metal dealers, and precious metal dealers
- Requires "other" second-hand dealers to start reporting purchase transactions of second-hand goods

For the past four years, the City and the County have jointly contracted with LeadsOnline in the amount of $23,002 per year, with the City's annual share totaling $10,066. APD pays this amount directly to the County through CJIS funds.

Approximately 13 local businesses in the City voluntary report their transactions electronically via LeadsOnLine: 5 pawnshops, 5 secondhand stores and 3 precious metal dealers. Approximately 5 businesses in the City have signed up with LeadsOnLine.

If Council approves of the proposed changes, adoption of the ordinance is recommended.

In response to Mayor Bellamy, Ms. Whitlock said that after further discussion, staff is open to exempt consignment sales in the definition of second-hand dealers. The APD is looking for criminals who sell and want their money immediately. Consignment shops typically get items and sell them at a later date.

Mayor Bellamy was concerned that sporting goods stores, in particular Play It Again Sports, buy and sell used sporting goods at an average of less than $20 per item. She didn't want to hurt some of our small business owners unintentionally with the additional cost in staff time.

Police Chief Bill Hogan explained that establishing a threshold would make it easy for a criminal to sell his stolen goods at the amount just under the threshold (regardless of the value) so it would not have to be reported. Also, if someone comes in with a number of different items, it should be reported because those are the kinds of things that come out of cars.

When Mayor Bellamy asked about businesses who do not have a computer or internet, Chief Hogan assumed that most people in business have a computer. It does, however, take an internet connection in order for the information to be electronically transferred to the APD. To enter the data is very quick. We don't want to put an undue burden on our businesses; however, we need to identify those individuals who are victimizing people on a regular basis. He said the APD would be happy to work with businesses if they have a problem.

In response to Councilman Bothwell, Police Chief Hogan said that where there are consignment booths with an established business at an antique mall, staff would be willing to

write that out of the ordinance. Again, he is more concerned about people coming into the business off the street to sell.

In response to Councilman Bothwell about scrap metal dealers who already have an established system of bookkeeping and reporting, Police Chief Hogan said that it is his understanding that you can enter the information into the business software and it will dump right into LeadsOnLine.

Councilman Russell moved to adopt an amendment to the City's pawnbroker ordinance which would require pawnbrokers and second-hand dealers to submit their daily pawn and/or purchase transactions to the APD electronically, with the exemption of consignment sales in the definition of second-hand dealers; and with a small dollar threshold. This motion was seconded by Councilwoman Manheimer.

The following individuals spoke in support of the ordinance amendment in that it is a low cost to the business owner and a very simple program to use in order to assist law enforcement in investigations:

Mr. Alan Sheppard, Owner of Alan's Jewelry & Pawn and representing two other pawn Shops
Mr. Russell Whitmire, Manager of Leicester Pawn & Gun Shop
Mr. Graham Shaw, Corporate Operations Manager at Alan's Jewelry & Pawn

The following individuals spoke in opposition of the ordinance amendment, mainly because of the amount of time to enter the data, the need for additional staff, the need to purchase a computer and internet service, and the cumbersome extra step for small priced items to be entered, noting specific amendments they would like to see:

Mr. Robert Cleveland, Owner of Play it Again Sports (suggest sporting equipment items with a fair market value of under $250 be excluded from the second-hand dealer definition)
Mr. Kenneth Jones, Manager of Antique Market Gallery on Broadway (provided Council with copies of ordinances from three other cities) (suggested antique dealers and consigners be exempt from the second-hand dealer definition and develop a list of what would fall under the regulations to be reported and all others exempt)
Representative of Sweeten Creek Antiques
Mr. Russ Towers, Co-Owner of Second Gear
Ms. Debra Bryant, Bryant Antiques in Biltmore
A dealer from Bryant Antiques in Biltmore
Ms. Carolyn Doyle, Plato's Closet
Representative of Biltmore Lamp & Shade Gallery
Partner of Village Antiques
Mr. Otto Hauser, owner of Self Antiques and Owner of Antique Market Gallery

In response to Mayor Bellamy, Ms. Whitlock said that staff would be happy to change the effective date from April 15, 2011.

In response to Councilman Russell, Ms. Whitlock said this ordinance applies only to purchasing second-hand goods. Regarding booths, there is an exemption that any person or business whose only business transactions with second-hand goods in the City consist of a display space, booth or table maintained for displaying or selling merchandise at any trade show, convention, festival, fair, flea market, swap meet or similar event that is not in a fixed location (fixed location is anything that is more than 365 days). Anything temporary would be exempt.

Upon inquiry of Vice-Mayor Newman, Councilman Russell amended his motion to amend the second-hand definition to exempt on both sides of the transactions those items purchased

from garage sales, estate sales and auctions. Councilwoman Manheimer accepted the amendment.

Upon inquiry of Councilman Bothwell regarding enforcement, Police Chief Hogan said that enforcement is difficult and if a business is caught violating the ordinance, it would be a first class misdemeanor. They also follow-up on tips. If information is not uploaded everyday, no red flags would be raised. He said they typically get to know the business and work with them.

At Councilwoman Manheimer's suggestion, Police Chief Hogan said that staff would be amenable to introduce a small threshold of $20-30 range. He reiterated the Police Department wants to account for purchases by the store, not sales.

Mayor Bellamy felt it might be appropriate to hold one more public meeting so people can clearly understand the ordinance, with Council's amendments, and then have staff bring back a revised ordinance amendment. She suggested notification in the City's eNews, and even an ad in the newspaper. Ms. Whitlock said that she has a list of businesses she will notify, along with sending out a press release.

In response to Councilman Davis, Ms. Whitlock said that the cost to the dealer will be access to a computer and an internet connection.

Councilman Bothwell seemed like it would be possible to include in the ordinance amendment the specific goods that should be reported.

It was the consensus of Council to have staff host another public meeting to go over the amendments of Council as follows (matter to be brought back to Council on April 26, 2011): (1) exemption of consignment sales in the definition of second-hand dealers; (2) a $25 threshold; and (3) exemption on both sides of the transactions those items purchased from garage sales, estate sales and auctions.

**B. PUBLIC/PRIVATE PARTNERSHIP PROPOSALS**

Economic Development and Civic Center Director Sam Powers said that based on Council's adoption of the Land Use Incentive Policy, the developer requested the Weirbridge Workforce Housing Incentive Grant and the Rockwood Park/Audubon Apartments voluntary annexation and City/County/private park development items be continued to allow the developer to work with staff on the new policy guidelines. The developer has requested the next meeting on March 22, 2011.

Due to the feasibility of staff working with the developer and still meeting the agenda guidelines, it was the consensus of Council to postpone both items until the April 12, 2011, agenda.

**C. RESOLUTION NO. 11-46 - RESOLUTION AUTHORIZING APPROVAL OF HOUSING TRUST FUND LOANS TO BEAUCATCHER PROPERTIES, LLC (SHILOH ROAD) AND MOUNTAIN HOUSING OPPORTUNITIES, LLC (EAGLE MARKET PLACE)**

Community Development Analyst Randy Stallings said that this is the consideration of a resolution authorizing approval of Housing Trust Fund loans to Beaucatcher Properties, LLC (Shiloh Road) and Mountain Housing Opportunities, LLC (Eagle Market Place).

Staff received three (3) applications for HTF funding totaling $680,000. These applications were presented to the Housing and Community Development Committee (HCD) on February 17 and each was evaluated on its own merit. Resources were insufficient to approve all applications. The current available cash balance in the Housing Trust Fund is $293,711. Non-

liquid assets in the form of City-owned real estate could potentially return an additional $300,000 to the fund prior to fiscal year-end; however, those funds are tentative and the timing of receipt remains unknown.

Regularly scheduled loan payments for the remainder of the fiscal year can confidently be projected at $55,940. These future payments have been considered by the HCD in their decision. The total amount of fund resources, including both the current cash balance and projected revenues thru June 30, 2010, is $349,651. Possible future appropriations have not been considered by the HCD in their projections.

Of the three (3) applications presented, two (2) have been recommended by the HCD for approval. An application from Beaucatcher Properties LLC for a project on Shiloh Road in South Asheville has been approved by HCD at an amount of $80,000. The total award is conditional upon the receipt of future program revenue. At the present time, HCD is requesting that $48,000 be made available for the project. The remaining $32,000 will be awarded only if sufficient funds become available.

An application from Mountain Housing Opportunities, LLC (MHO) has been approved by HCD for a development in the historic Eagle Market Street neighborhood. The amount of the loan request is $300,000. A firm loan commitment is needed by the end of April to secure sufficient points for local leverage in the final tax credit application. Disbursements from the HTF are not anticipated to be needed until early 2012.

Beaucatcher Properties, LLC- Shiloh Road (address unassigned) $80,000.

Mr. Kirk Booth representing Beaucatcher Properties LLC has proposed a 4-unit rental project on Shiloh Road in South Asheville. The total development cost is $255,000. The site size is .36 acres and the property is currently zoned RS-8. Rents will be restricted to persons below 60% AMI. The project will include two (2) 2-bedroom single family residences, each with a 1-bedroom accessory apartment over a rear garage. The site is infill development in an older established neighborhood within 500 feet of a transit stop.

The terms requested are $80,000 at 2.00% interest-only for 30 years. Due to the scale of the project, no TRC or P&Z approval is required and the developer is ready to begin construction immediately. It is anticipated that units could be fully constructed and leased by the end of June.

The requested per-unit subsidy is $20,000. The loan request represents 31.3% of the total development cost. The land is being purchased from a local bank at 55% below the tax assessed value. The total per-unit development cost is very low at $63,750 per unit. The project will not be Energy Star certified but does incorporate many of the desired elements such as Energy Star appliances, low-e windows, and low-flow water systems.

Pros:

- The development costs per unit are very low at $63,750.
- Land cost is far below market value.
- The accessory apartments allow for additional density as use by right.
- Relatively small investment required by the City.
- Infill development supports strategic planning goals.
- Single family rentals provide alternatives to families with children.
- Construction is ready to proceed immediately.
- The developer has a good track record with the Housing Trust Fund and has completed other local projects in a timely manner.
- Local labor will be used for the project.

Cons:

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- The per-unit subsidy of $20,000 is the program maximum.
- Very few affordable units will be added to the local housing stock per dollar invested.

Mountain Housing Opportunities, LLC (MHO)- Eagle Market Place $300,000

MHO has proposed a 70-unit multifamily rental development in the historic Eagle-Market Street neighborhood. The total development cost is $11.3 million. The site size is .41 acres and is currently zoned Central Business District. Rents will be restricted to persons below 60% of Area Median Income. In response to the stated priorities of the fund, 60% of the units will be one-bedroom and efficiency units. There is also a commercial component of the project; however, only the residential development is under consideration for Housing Trust Fund Support.

The terms requested are $300,000 at 2.00% interest-only for 20 years. The project brings significant equity through Low Income Housing Tax Credits. The design will incorporate the historic Del Cardo, Ritz & Collette buildings, thereby preserving the historic character of the neighborhood. MHO and the Eagle Market Street Development Corporation are partners in this proposed development.

The requested per-unit subsidy is very low at $4,285 per-unit. The loan request represents only 2% of the total development costs. The developer has also applied for HOME funds in the amount of $275,000. The Del Cardo and Collette buildings are being donated to the project. The Ritz building is being purchased at a cost of $1.3 million, or $18,571 per unit. The total per-unit development cost is somewhat high at $162,011.

The project will be LEED certified. Ten percent (10%) of the units will be fully ADA accessible and an additional 58 units will have ADA features which would make the units visitable. Twenty-two underground parking spaces are incorporated in the design. The developer is negotiating with local parking operators to secure monthly parking for tenants.

The projects directly support the City's Strategic Operating Goals as follows: (1) *Affordable*: The project proposal is supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville; and (2) *Sustainable*: The proposed projects provide new housing units located near transit lines, higher urban development densities, and encourage higher standards of energy efficiency. The projects also address the priorities of the Consolidated Strategic Housing & Community Development Plan by increasing the housing stock, providing affordable rental units, building high quality energy-efficient housing, and coordinating development with transportation and jobs.

The current balance in the Trust Fund is $293,711. There are insufficient funds at the present time to fully fund the proposed developments; however, projected receipts prior to fiscal year end will be sufficient to fund both projects at the level approved by HCD. The available fund balance will be depleted if the loans are approved and the fund will be unavailable for future development until funds are replenished in FY 2011-12. The projects are new construction and are anticipated to add $11.6 million dollars in new development to the City tax base.

The Housing and Community Development Committee recommends City Council approve a resolution approving the following loans: (1) $80,000 to Beaucatcher Properties, LLC for the development of four (4) single-family rental units on Shiloh Road; $48,000 of the loan to be made immediately available for disbursement following loan closing and $32,000 to be made available when sufficient funds become available; and (2) $300,000 to Mountain Housing Opportunities, LLC for the development of seventy (70) multifamily units at Eagle Market Place; all funds to be made immediately available for disbursement following loan closing.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 11-46. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 33 – PAGE 355**

**B. BOARDS & COMMISSIONS**

Regarding the Asheville-Buncombe Fair Housing Commission, it was the consensus of Council to readvertise for the vacancies due to no interested applicants.

**RESOLUTION NO. 11-52 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS-POLICE ADVISORY COMMITTEE**

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that Ron Maynard (east representative), on the Citizens-Police Advisory Committee, resigned, thus leaving an unexpired term until June 30, 2011.

The following individuals applied for a vacancy on the Citizens-Police Advisory Committee: Adam Clayton Banner, Lori Gerber, Barbara Monteath Buchanan, Toni Hicks, Richard G. Lee, Gabriela Volkomer, Sarah Nunez and Debbie Applewhite.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended appointing Ms. Debbie Applewhite.

Councilman Russell moved to appoint Debbie Applewhite to serve the unexpired term of Mr. Maynard, term to expire June 30, 2011, and then to serve a full three-year term, term to expire June 11, 2014, or until her successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 33 – PAGE 364**

**RESOLUTION NO. 11-53 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ART BOARD**

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that Harry Harrison has resigned from the Public Art Board, thus leaving an unexpired term until June 30, 2012.

The following individuals applied for a vacancy on the Public Art Board: William Meller, Richard G. Lee, Sharon Trammel, Susanne Hackett and Leslie Shaw.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended appointing Ms. Sharon Trammel.

Councilman Smith moved to appoint Sharon Trammel to serve the unexpired term of Mr. Harrison, term to expire June 30, 2012, or until her successor has been appointed. This motion was seconded by Councilwoman Manheimer and carried unanimously.

**RESOLUTION BOOK NO. 33 – PAGE 365**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

**VIII. ADJOURNMENT:**

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Mayor Bellamy adjourned the meeting at 9:48 p.m.

Magdalen Bourleson — CITY CLERK

James W. Bellamy — MAYOR

Tuesday – March 22, 2011 – 3:00 p.m.
First Floor North Conference Room

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Brownie W. Newman and Councilwoman Esther E. Manheimer (both travelling to meeting from out of town)

**General Fund Operating Budget**

Director of Administrative Services Lauren Bradley said that regarding Revenue assumptions (1) Overall slight decrease in revenues (a) State revenue decrease for Transit operations; and (b) Decreases in investment earnings and permit revenue; (2) No property tax increase; and (3) No fund balance appropriation. Regarding Expenditure Assumptions (1) Continuation of core services; (2) Savings strategies with a focus on workload metrics; (3) Expenditure increases expected for fuel, law enforcement, LGERS; and (4) No change in employee compensation and City health care contribution.

Regarding compensation and benefits (1) Compensation to remain at current levels during FY 11-12; and (2) Blue Ribbon Task Force recommendations presented to City Council February 22, 2011 (a) Operate a sustainable Health Care Program that provides access, quality and cost-effective medical care; (b) General Fund contribution to health care fund remain flat (i) Necessitates increases to premiums, co-payments and co-insurance; (c) Expansion of Employee Health Clinic; (d) Implementation of Wellness Program with incentives; and (3) Consideration of continuation of retiree health care coverage for future hires.

Regarding medical plan design changes (1) Plan Design Changes (a) Wellness program implementation with incentive to participate; (b) Three plan options (HRA, Basic & Enhanced); (c) Increase in employee premium costs on average of 30%; (d) Increase in member out of pocket costs (co-payments & deductibles); (e) Preventive services covered at 100%; (f) Expanded capabilities of Health Services with no fee for service; and (g) Domestic Partner Benefits extended; and (2) Wellness Program Participation (a) Health Risk Assessment and Biometric screenings; (b) Non-tobacco affidavit or commit to participate in cessation program; and (c) Participate in initial one-on-one meeting with Health Services staff and regular follow up to ensure compliance with recommendations.

Regarding domestic partner benefits (1) Available during open enrollment for FY 11-12 plan year (a) Anticipated cost impact of around 1%; and (b) Prepared to offer for same-sex domestic partners as directed by City Council; and (2) Impact of IRS regulations (a) Employee paid premiums for coverage post-tax; (b) Income tax implications for value of employer subsidy for benefit; and (c) Restrictions on HRA and Flexible Spending reimbursements.

Ms. Bradley then talked about service delivery (1) East Asheville Community Center (a) Center available for scheduling community events and programming; (b) staffing shifted to other community centers; and (c) financial impact = $80,000 in cost savings; (2) Transportation Demand Management Program (a) exploring alternatives for housing regional program (DOT regional plan and vision statement on hold); (b) currently funded 50/50 by State and City funds; and (c) financial impact = $50,000 in cost savings.

Brush and leaf collection (1) brush collection (a) return to twice per month brush collection; and (b) financial impact = $125,000 in expenditures; and (2) leaf collection (a) collect only bagged leaves (i) twice per month collection during leaf season; (ii) bags can be provided free of charge to households; (iii) improves efficiency of collection; and (iv) positive impact on street sweeping and water quality; and (b) financial impact = $83,000 in cost savings.

Regarding Solid Waste & Recycling, the Waste Stream Reduction Program (1) Changes the way we collect solid waste and pay for it consistent with recommendations in the Sustainability Management Plan; (2) Introduces variable-sized garbage cans: 65-gallon and 95-gallon; (3) Introduces single stream recycling in 95-gallon carts; and (4) Cost of program enhancements is approximately $1 Million; proposed solid waste fee structure designed to cover costs. She then reviewed the solid waste fee proposal for 65-gallon vs. 95-gallon and noted that staff is still working with the recycling provider to reduce the fee. This model is a change in service delivery.

**Fees & Charges**

Ms. Bradley then reviewed the fees & charges as follows: (1) Fire Inspection fees in the ETJ (a) Brings service up to full cost recovery by adding a 20% surcharge to inspections in the ETJ; and (b) $25,000 anticipated in revenue; (2) Parking garage rates (a) Civic Center garage (i) Hourly: 50 cents to 75 cents; (ii) Monthly: $70 to $80; and (iii) Monthly discounted rates: $35 to $40; (b) Rankin and Wall Street garage special event rates (i) Special Events: $6 to $7; and (c) Downtown resident monthly parking discount: 60% of monthly fee; (Finance Committee was unanimously against this.) (3) Special event discount rate (a) In FY 10-11, City Council approved a 75% discount on permit fees for non-profits holding special events; (b) To date, 49 events have qualified - Value of fees waived is $7,180; and (c) Some concerns have been raised about the use of space - Staff is recommending a cap to the fee waiver at six events per year per group; and (4) Domestic Partner Registry (a) Registry active by May 1; (b) City resident fee: $75; and (c) Outside City resident fee: $100.

Ms. Bradley said at Council's April 12 budget briefing she would review the enterprise funds, Capital Improvement Program and update Council on the outside agencies. The proposed budget presentation would be held on April 26, along with the budget public hearing on May 10 and final budget adoption on May 24.

After Ms. Bradley's presentation and throughout Council's discussion and direction, Ms. Bradley responded to various questions/comments/suggestions by Council (with those not readily available to be provided to Council). Some questions/comments/ suggestions consisted of, but are not limited to: does the re-opening of the Hillcrest Pedestrian Bridge merit the additional allocation of three police officers; options and trade-offs to compensate employees with a small increase in pay; data on what Mission Hospitals would charge if they ran our Health Care Clinic; future Finance Committee discussion regarding leveling the playing field so single employees do not subsidize married employees under our Health Plan; data requested about attrition rates for City employees over last three years; when will the Blue Ribbon Healthcare Task Force recommendations be voted on or are they already being built into the budget; is it possible to have a monthly leaf collection in addition to asking residents to call in for leaf collection; suggestion to go to every other week on garbage collection; suggestion for formal request for the Land-of-Sky to take over the Transportation Demand Management Program since it is regional; comment that changes to the East Asheville Community Center sends a wrong message just to save $8,000; what is the term of payback by the vendor for capital costs regarding the single stream recycling; suggestion to see a greater incentive for people to have smaller recycling cans; is it possible of scanning the garbage can bar codes and bill the property owners based on how many pick-ups; suggestion to use some Energy Block Grant funds or interns to find creative ways to run our recycling program; note that if we offer enough recycling options, more people will begin to recycle saving us tipping fees and extend the life of the landfill; opportunity to partner with Buncombe County for reduction in waste stream to the landfill; data on amount of solid waste

reduction citywide per year; can people purchase the 95-gallon containers themselves; interest in seeing options for different fees for different cans; any idea how many City employees would use the domestic partner benefits; is the domestic partner benefit application fee true cost recovery; request to have a quarterly report of the workload for the City Clerk's Office administering the Domestic Partner Registry; will the proposed annexation laws affect the fire inspection fees proposed; and any thoughts to go up incrementally on parking garage fees.

Due to timing, Ms. Bradley was unable to complete her presentation on the fees and charges regarding Water Rate Study. City Manager Jackson said that staff would re-work Council's budget briefing schedule to possibly include another briefing.

At 4:40 p.m., Councilman Davis (in the absence of Mayor Bellamy and Vice-Mayor Newman) adjourned the budget briefing.

Tuesday – March 22, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding (excused from meeting at 7:10 p.m.); Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer (arrived in meeting at 5:06 p.m.); Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Russell asked for a moment of silence for those who have suffered in the natural disasters.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF RONALD PAULUS, MD, MBA, PRESIDENT AND CEO OF MISSION HEALTH SYSTEM**

Mayor Bellamy was pleased to recognize Dr. Ronald Paulus, President and CEO of Mission Health System since September of 2010. Dr. Paulus was pleased to be a part of Asheville and looked forward to continuing to work with the City, County and region.

**B. PROCLAMATION PROCLAIMING MARCH 22, 2011, AS "CIVITAN INTERNATIONAL DAY"**

Mayor Bellamy read the proclamation proclaiming March 22, 2011, as "Civitan International Day" in the City of Asheville. She presented the proclamation to Mr. Calvin Remmers, President of the Asheville Civitan Club, who briefed City Council on some activities taking place during the month.

**C. PROCLAMATION PROCLAIMING MARCH 25, 2011, AS "GREEK INDEPENDENCE DAY"**

Mayor Bellamy read the proclamation proclaiming March 25, 2011, as "Greek Independence Day" in the City of Asheville. She presented the proclamation to Mr. Andy Apostolopoulos, Chair of the Karpenisi Committee of Asheville Sister Cities Inc., who thanked City Council for their support and announced their upcoming events. He presented Mayor Bellamy with a gift of flowers.

**D. PROCLAMATION PROCLAIMING APRIL 10-16, 2011, AS "CRIME VICTIM RIGHTS WEEK"**

Mayor Bellamy read the proclamation proclaiming April 10-16, 2011, as "Crime Victim Rights Week" in the City of Asheville. She presented the proclamation to Ms. Lori Gerber, MS, Founder of Center for New Beginnings, who briefed City Council on some activities taking place during the week.

**II. CONSENT AGENDA:**

Mayor Bellamy read a resolution in memory of Katherine M. Davis, Councilwoman Davis' mother. On behalf of City Council, she expressed Council's deepest sympathy. She asked that the resolution be added to the Consent Agenda.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 8, 2011**

**B. RESOLUTION NO. 11-54 - RESOLUTION AMENDING POLICY GOVERNING CITY COUNCIL APPOINTMENTS**

Summary: The consideration of a resolution amending the policy governing City Council appointments.

There has been some confusion regarding when the various boards and commissions should cancel their meetings due to inclement weather. On January 25, 2011, the Boards & Commissions Committee discussed this issue and is recommending the policy be amended to include a new section as follows:

"Inclement Weather

If the Asheville City Schools are cancelled, then any board/commission meeting scheduled for that day will be cancelled.

The chairman of the board/commission will have the discretion of cancelling a meeting in the event of safety concerns when the Asheville City Schools have delayed starts"

In addition, a second amendment was recommended by the Committee that "The Boards & Commissions Committee may request that a member in good standing be allowed to serve out their term should they become a non-city resident."

Staff recommends City Council adopt the two amendments to the policy governing City Council appointments.

**RESOLUTION BOOK NO. 33 – PAGE 366**

**C. RESOLUTION NO. 55 - RESOLUTION OF INTENT TO CLOSE AN ALLEY OFF MADISON STREET AND SETTING A PUBLIC HEARING FOR APRIL 26, 2011**

Summary: The consideration of a resolution of intent to permanently close an alley off of Madison Street and to set the public hearing on April 26, 2011.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjacent property owners, Andy Brokmeyer, Millagro LLC and Scott Blake, Blake Holdings LLC have requested the City of Asheville to permanently close an alley off of Madison Street.

The Greenway Commission met on March 10, 2010, and unanimously approved the closure.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of intent to permanently close Cooper Boulevard and to set the public hearing on April 26, 2011.

**RESOLUTION BOOK NO. 33 – PAGE 371**

**D. RESOLUTION NO. 11-56 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR STATE MATCH TO PURCHASE TWO DIESEL-ELECTRIC HYBRID AND TWO DIESEL BUSES**

**ORDINANCE NO. 3952 - BUDGET AMENDMENT TO PURCHASE BUSES**

Summary: The consideration of a resolution authorizing the City Manager to enter into an Interlocal Agreement with the N.C. Dept. of Transportation (NCDOT) in the amount of $199,938 as State match to purchase two diesel-electric hybrid and two diesel buses to replace four of the existing 1996 diesel buses; and a budget amendment in the amount of $1,999,376, 10% of which will come from the City's Transit Capital Fund, to purchase these buses.

City staff is in the process of acquiring four new buses for the transit fleet. Part of the effort was to pursue 10% State match for the capital expenditure. Staff applied with the NCDOT and the funds were granted.

The new buses will replace four of the 1996 diesel buses that have already reached their useful life. This is part of the City staff's effort to replace eleven of the remaining 1996 buses. The aging fleet is still operative; however the 1996 buses have begun presenting the problems attributable to age, engine repairs and other parts increasing the maintenance costs. To date, five of the sixteen buses have been replaced with diesel-electric hybrid buses.

The City is in the process to develop the specifications to bid this project, since it was unable to find any contract that will satisfy City's and Federal Transit Administration requirements. The estimated timeframe for completion is 18 months.

The estimated cost of this project is $1,999,376. The City is funding this project using section 5309 of the Federal Transit Administration which provides eighty percent (80%) for capital projects or $1,599,500. The City will provide 10% or $199,938 and with this Interlocal Agreement the State will contribute the additional 10%.

This action complies with the current City Council's Strategic Operating Plan by helping to achieve short-term and long-term energy goals and reducing city carbon emissions, helping to establish a multi-modal transportation plan by making transit system improvements, and helping to fully leverage funding for transportation improvements. This action also complies with the capital improvement recommendations included in the Transit Master Plan that was accepted by the City Council on October 27, 2009.

The Transit Commission supports the subject action.

Pros:

- The subject allocations would enable the City to continue replacing its aged transit system fleet which would produce savings in maintenance and fuel costs.
- The subject action would help reduce the City's carbon emissions.
- The Federal Transit Administration (FTA) would fund 80% of the subject project cost.
- The North Carolina Department of Transportation (NCDOT) would fund 10% of the subject project cost.
- The City of Asheville's local match has been identified and would not require any additional allocation of funds.

Con:

- The City is required to fund 10% ($199,938) of the subject project cost.

The project cost will be $1,999,376, with 80% of this total to be paid by federal funds - FTA section 5309; 10% or $199,938 by the City and 10% or $199,938 by the State. The City funding of $199,938 will be appropriated from the Transit Capital Reserves. After this appropriation, there will be approximately $50,000 remaining in the Transit Capital Reserves.

City staff recommends City Council (1) authorize the City Manager to enter into an Interlocal Agreement with the North Carolina Department of Transportation in the amount of $199,938 as State match to purchase four buses, two diesel-electric hybrid and two diesel buses to replace four 1996 diesel buses; and (2) adopt the budget amendment, in the amount of $1,999,376, 10% of which will come from the Transit Capital reserve funds, to purchase these buses

**RESOLUTION BOOK NO. 33 – PAGE 372**
**ORDINANCE BOOK NO. 26 – PAGE 460**

**E. RESOLUTION NO. 11-57 - RESOLUTION ADOPTING THE 2007 LOCAL WATER SUPPLY PLAN**

Summary: The consideration of a resolution adopting the 2007 Local Water Supply Plan.

Every year, the Water Resources Department is required to complete a Local Water Supply Plan (LWSP) update. On February 22, 2011, the N.C. Dept. of Environment and Natural Resources (NCDENR) issued a letter stating that the department's 2007 LWSP is complete and must be adopted by the water system's governing board. The LWSP contains a variety of information about the City of Asheville's water system, including:

- The distribution system (i.e. types/sizes of water lines);
- Water conservation programs;

- Water use (i.e. number of metered connections and average use by customer type);
- Water sales to wholesale customers;
- Monthly withdrawals from reservoirs;
- Surface water sources (i.e. locations and average monthly withdrawals);
- Wastewater discharge by the Metropolitan Sewerage District (MSD);
- Present and projected population;
- Present and future water supplies; and
- Other relevant information as NCDENR may require.

In order for the 2007 LWSP to be compliant with N.C.G.S. 143-335(l), City Council must formally adopt the plan. Once NCDENR reviews and approves the 2008, 2009, and 2010 plans, they will also have to be adopted by City Council.

This project is part of City Council's strategic plans to remain compliant with State regulations.

Pro:

- Adoption of the 2007 LWSP will ensure compliance with N.C.G.S. 143-355(l).

Con:

- If the 2007 LWSP is not adopted, then the City will not be compliant with N.C.G.S. 143-355(l) and may be issued a Notice of Violation from NCDENR.

There is no fiscal impact.

City staff recommends City Council adopt the 2007 Local Water Supply Plan.

**RESOLUTION BOOK NO. 33 – PAGE 373**

**F. RESOLUTION NO. 11-58 - RESOLUTION AMENDING THE MEMBERSHIP OF THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT TO ADD AN EX-OFFICIO NON-VOTING MEMBER FOR THE ELECTRIC POWER UTILITY SERVING THE CITY OF ASHEVILLE**

Summary: The consideration of a resolution amending the membership of the Sustainable Advisory Committee on Energy & the Environment (SACEE).

At the March 8, 2011, Boards & Commissions Committee meeting, they reviewed a request by SACEE for an additional voting seat on their Committee. After discussion, it was the consensus of the Boards & Commissions Committee to leave membership composition as established on September 26, 2006 as is, and add one ex-officio non-voting member for the electric power utility serving the City of Asheville.

Staff recommends City Council amend the membership of the Sustainable Advisory Committee on Energy & the Environment to add one ex-officio non-voting member for the electric power utility serving the City of Asheville.

**RESOLUTION BOOK NO. 33 – PAGE 379**

**G. ORDINANCE NO. 3953 - BUDGET AMENDMENT FOR A PLAYGROUND AT THE WNC NATURE CENTER**

Summary: The consideration of budget amendment, in the amount of $60,000, for a playground at the WNC Nature Center.

The City of Asheville in the Parks, Recreation & Cultural Arts Department has received a contribution from the Friends of the WNC Nature Center, Inc. to support the design and installation of a playground at the WNC Nature Center.

The action complies with the City Council 2010-2011 Strategic Plan Goal of fiscal responsibility of exploring alternative for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities. The action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it increases department funding with alternative funding and ensuring a high level of service in parks and facilities by addressing capital maintenance of existing parks and facilities to meet community standards.

Pros:
- Provides additional funds to support capital improvements at the Nature Center;
- Provides funds to enhance special projects and services to Nature Center visitors.

Con:
- None

A project budget authorizing one-time improvements to design and construct the playground will be established with approval of this budget amendment. The project budget will authorize expenditures up to $60,000. These expenditures will be fully funded with a donation from the Friends of the Nature Center in the amount of $60,000 that has been received; thus, there is no net fiscal impact to the City's operating budget.

City staff recommends City Council to adopt a budget amendment authorizing the City Manager to increase the budget for funds received from the Friends of the Nature Center in the amount of $60,000 to support design and installation of a playground at the WNC Nature Center.

**ORDINANCE BOOK NO. 26 – PAGE 462**

**H. RESOLUTION NO. 11-59 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY OF ASHEVILLE, A FEDERAL AVIATION ADMINISTRATION GRANT AGREEMENT FOR TERMINAL RENOVATION REIMBURSEMENT**

Summary: The consideration of a resolution authorizing the Mayor to approve a Grant Offer from the Federal Aviation Administration (FAA) in the amount of $514,193.

The FAA has offered a grant agreement to the Asheville Regional Airport. This grant, in the amount of $514,139 is for Terminal Renovation reimbursement.

Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 3-37-0005-039-2011.

**RESOLUTION BOOK NO. 33 – PAGE 380**

**I. MOTION ADOPTING THE BUDGET PLANNING CALENDAR FOR FISCAL YEAR 2011-12**

**J. RESOLUTION NO. 11-60 - RESOLUTION AUTHORIZING SUPPORT AND TO SERVE AS THE GOVERNMENT PARTNER IN THE ASHEVILLE ART MUSEUM'S GRANT APPLICATION TO THE NATIONAL ENDOWMENT FOR THE ARTS TO FUND THE DESIGN DEVELOPMENT PHASE OF THE ASHEVILLE ART MUSEUM CAPITAL EXPANSION PLAN**

Summary: The City of Asheville has a long history of outstanding collaborations and partnerships with the Asheville Art Museum, and has supported the capital expansion plan since its inception. There is a grant opportunity via the National Endowment for the Arts – Our Town Grant designed to support an art organization in its efforts to support creative place making projects that contribute to the livability of a community. If invited to submit a formal application, the Asheville Art Museum will apply for $250,000 to support the cost associated with the design development phase of the Asheville Art Museum capital expansion plan.

At its meeting on March 14, 2011, the City of Asheville Recreation Advisory Board made its recommendation to Asheville City Council to support and serve as the government partner in the Asheville Art Museum's formal application to the National Endowment for the Art's – Our Town Grant proposal;

**RESOLUTION BOOK NO. 33 – PAGE 381**

**K. RESOLUTION NO. 11-64 – RESOLUTION IN MEMORY OF KATHERINE M. DAVIS**

**RESOLUTION BOOK NO. 33 – PAGE 407**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Russell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. EAST END/VALLEY STREET NEIGHBORHOOD VISIONING PROJECT

Ms. Carmen Ramos-Kennedy, representing the East End Neighborhood Association, was pleased to present Council with the "East End/Valley Street Neighborhood Visioning Project." The overview of the project is that in the spring of 2010, the City jointed with the re-vitalized East End/Valley Street Neighborhood Association to plan and conduct a neighborhood visioning process. Members of the neighborhood came together earlier in the year to recreate a sense of community and to ensure that they have a voice in any future development of the area.

The overall goal of the Visioning process was to involve a diverse group of members of the East End/Valley Street neighborhood in the process of developing a shared vision for the future of their neighborhood. More specific goals for the process were (1) fostering relationships between neighborhood members through facilitated discussions; and (2) developing a clearer and more focused plan of work for the Neighborhood Association.

The effort was a collaborative process that involved Bill and Marianna Bailey, two local community members with extensive background in facilitating neighborhood and community development, as facilitators, City staff as process facilitators and members of the Neighborhood Association's newly formed Steering Committee. The Project took place over four Thursdays evenings in May and June. Approximately 35 members were involved in the process.

The Neighborhood Visioning Project resulted in the identification of 4 goal areas (1) strengthen the Association and inspire community participation; (2) record the stories and history of the East End/Valley Street Neighborhood; (3) promote activities for East End/Valley Street neighborhood; and (4) develop an East End Land Use Plan.

Since completion of the East End/Valley Street Visioning Project, the East End/Valley Street Neighborhood Association has moved forward with appointing four teams to guide the implementation of the neighborhood vision and future activities of the Neighborhood Association. The four teams are East End Neighborhood, Historic Preservation, Martin Luther King Park and Land Use. They have also elected new officers and begun work on implementing their identified goals.

On behalf of City Council, Mayor Bellamy thanked Ms. Ramos-Kennedy and the East End/Valley Street Neighborhood Association on this worthwhile project.

In response to Councilman Bothwell, Mayor Bellamy said that conversations are in process about renaming South Charlotte Street back to Valley Street.

Councilman Russell moved to accept the report and requested staff to advise Council on plan implementation. This motion was seconded by Councilman Davis and carried unanimously.

**IV. PUBLIC HEARINGS:**

**A. CONTINUATION OF A PUBLIC HEARING TO CONSIDER A CONDITIONAL ZONING REQUEST FOR INGLES MARKETS INC. LOCATED AT 153 SMOKY PARK HIGHWAY FROM HIGHWAY BUSINESS DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A NEW 105,175 SQUARE FOOT GROCERY STORE WITH ASSOCIATED CAR WASH, GAS STATION AND 32,060 SQUARE FEET OF ADDITIONAL RETAIL SPACE AND A SIGNAGE PLAN**

**ORDINANCE NO. 3954 - ORDINANCE TO CONDITIONALLY ZONE INGLES MARKETS INC. LOCATED AT 153 SMOKY PARK HIGHWAY FROM HIGHWAY BUSINESS DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A NEW 105,175 SQUARE FOOT GROCERY STORE WITH ASSOCIATED CAR WASH, GAS STATION AND 32,060 SQUARE FEET OF ADDITIONAL RETAIL SPACE**

**ORDINANCE NO. 3955- ORDINANCE ADOPTING A SIGNAGE PLAN FOR INGLES MARKETS INC. LOCATED AT 153 SMOKY PARK HIGHWAY**

Mayor Bellamy said the public hearings (which were combined into one hearing) were held on February 22, 2011, and continued to this date to see if the applicant would agree to the conditions incorporated into the motion. The continuance would also allow staff to meet with Ingles representatives and hopefully come to some agreement.

Urban Planner Nate Pennington said that on February 22, 2011, City Council held a public hearing on a conditional zoning request from Ingles Markets, Inc. to consider a site plan for the redevelopment of the Ingles property located at 153 Smoky Park Highway. A large number of modifications to the UDO (Unified Development Ordinance) (many related to parking lot landscaping) were being sought by the applicant. While the public hearing was held on February 22nd, the item was ultimately continued to in order to give time for the Ingles representatives to work with City staff in reducing the number of modification requests to bring the site plan in further compliance with the UDO. Since the time of the February 22nd meeting, Ingles has submitted a revised site plan for Council consideration. All items related to parking lot landscaping have now been satisfied. The following list provides an outline of the current status of the original modification requests related to the revised site plan. The only remaining request (not supported by staff) is related to vehicular canopy lighting, and no changes have been made to that request by Ingles representatives.

1. *Retaining Walls* – Section 7-10-5 of the UDO requires that foreground landscaping or attached vegetative screening be required for any retaining wall sections over 20 feet in height regardless of location relative to a public or private street. **No changes to this modification request are being proposed and staff supports this request.**

2. *Off-Street Parking* – Section 7-11-2(c)(1) of the UDO requires a minimum number of off-street parking spaces based on land use. The Ingles shopping center development requires a total of 846 spaces. 718 spaces are provided resulting in a deficiency of 128 spaces or approximately 15% of the required total. **The deficiency in parking spaces has increased by 14 spaces from the original site plan due to the addition of the interior pedestrian island. Staff supports this modification request.**

3. *Parking Lot Landscaping* – Section 7-11-2(d)(4)c. of the UDO requires that when more than four trees are required in a parking lot with interior rows, 50% of the trees and shrubs must be planted in islands or medians located within the parking lot. The required amount of trees to be planted in islands and medians throughout this shopping center is 115 trees. **This modification request is no longer necessary as the required number of trees have been adequately distributed throughout the parking lot.**

4. *Parking Lot Landscaping* – Section 7-11-3(d)(4)d. of the UDO requires that when more than four bays of parking are proposed, an interior island with an average width of 20 feet and a length equivalent to the length of the parking bay is required. **This modification request is no longer necessary and the requirement for the installation of an interior island has been met.**

5. *Parking Lot Landscaping* – Section 7-11-3(d)(4)h. of the UDO requires that each parking space be located within 60 feet of a tree as measured from the trunk of the tree to the closest point of the parking space. **This modification request is no longer necessary. All proposed parking spaces are within 60 feet of a tree.**

6. *Open Space* – Section 7-11-4(c) of the UDO requires that 15% of lot area be reserved for open space for developments that primarily include suburban open space amenities. **The applicant has elected to pay a fee in lieu of the deficient amount of required open space and therefore this modification request is no longer necessary.**

7. *Outdoor Lighting for Vehicular Canopies* – Section 7-11-10(k)(1) of the UDO requires that areas under a vehicular canopy have an average illuminance of 20 maintained footcandles. The applicant is requesting an average of 80 maintained footcandles or 400% increase although the submitted photometric site plan indicates an average of 57.9 maintained footcandles which equates to a 289.5% increase. **This modification request is still requested as originally submitted, and staff's non-support for this item remains unchanged.**

   **Staff has conducted an informal lighting survey of other stations and canopies. The majority of the sites surveyed, outside of the existing Ingle's sites, were found to comply with the 20 Footcandle average.**

8. *Big Box Required Standard #1* – Appendix 7-F of the UDO requires that if less than 25% of the parking is located to the side or rear of the building, then the parking area is to be buffered from the street with a 50-foot landscaped buffer that incorporates 150% of the plantings called for in a Class "B" buffer and includes a berm or wall with a minimum height of 42 inches. The applicant is requesting the elimination of this requirement due to the existing development on the site. **No changes to this modification request are being proposed and staff supports this request.**

9. *Big Box Required Standard #1* – Appendix 7-F of the UDO requires that outparcels shall meet the design standards set forth in this section and shall not incorporate drive through facilities. The applicant is seeking to have this requirement eliminated. **No changes to this modification request are being proposed and staff supports this request.**

Mayor Bellamy noted that at this continued public hearing, Council would take further comment on new information only related to the parking lot landscaping requirements and the outdoor lighting issue. However, since the parking lot landscaping requirements have been satisfied by the applicant, public comment would only be taken on the remaining issue of the outdoor lighting variance request.

City Attorney reminded Council that since this is a conditional zoning, any conditions must be agreed to by the applicant and the Council.

Mayor Bellamy opened the public hearing at 5:32 p.m. for both the conditional zoning issue and the signage plan issue.

Mr. Preston Kendall, Project Manager for Ingles Markets, said their prototype gas canopies are 100 footcandles, but have looked at what they felt they could do as far as customer safety is concerned and reduced their request to 60 footcandles. He showed pictures of Ingles canopies, noting they don't have light trespass or glare. He said that he went to over 40 convenient stores/gas stations and couldn't find a one in the City that met the lighting ordinance standard. The biggest reason they request the 60 footcandles is for safety. At night their gas stations are still open for credit and debit cards and their customers come first to them. Ingles canopies had special features that keep light from glaring out the sides, noting that Ingles stores have many energy-saving measures. He urged Council to consider their variance request of 60 footcandles for customer safety.

Mr. Gene Ellison, attorney representing Ingles Markets, felt that because the fuel center is located 115 feet from Smoky Park Highway, the light will not be illuminated onto Smoky Park Highway. He felt this is truly a safety issue. He hoped City Council would consider their variance request to 60 footcandles.

The following individuals urged City Council to uphold the City's lighting ordinance of 20 footcandles (which standard comes from an Illuminating Engineering Society of North Carolina recommendation), for various reasons, mostly regarding the negatively impacting the night sky by light pollution and night blindness:

Mr. Brian Dennison, local astronomer
Mr. Alan Ditmore, Leicester resident
Mr. Bernard Arghiere, East Asheville resident
Mr. Bill Roskind
Mr. Steve Rasmussen (also opposed to variances regarding signage plan)
Mr. Fred English, Haw Creek resident
East Asheville resident
Ms. Laura Piraino, Asheville resident
Mr. Mike Lewis

Mr. Ben Pace, member of the Enka Candler Business Association, supported Ingles variance request for 60 footcandles as more light increases safety.

Mayor Bellamy closed the combined public hearing at 6:08 p.m.

Councilman Bothwell felt there is no hardship shown on any of the variances requested and could not support any variance request.

In response to Vice-Mayor Newman, Assistant Director of Planning & Development Shannon Tuch, explained how the City came up with the standard that areas under a vehicular canopy have an average illuminance of 20 maintained footcandles. She noted that the common standard across the country is between 20-24 footcandles and the 20 footcandle standard is from national organization (Illuminating Engineering Society of North Carolina).

In response to Vice-Mayor Newman, City Attorney Oast said that a consensus on the ordinance does not have to be reached at this meeting. However, he felt that the ordinance could not be final or implemented until agreement is reached and there is some agreement reflected on the record. He felt that Council can adopt an ordinance with conditions, subject to Ingles either agreeing or not agreeing at some later meeting.

Vice-Mayor Newman moved to adopt an ordinance for the conditional zoning of the project identified as Ingles Markets, Inc., located at 153 Smoky Park Highway from Highway Business District to Highway Business District/Conditional Zoning to allow for the development of a new 105,175 square foot grocery store with associated car wash, gas station and 32,060 square feet of additional retail space, and approval of the modification requests only supported by City staff (not the outdoor lighting for vehicular canopies modification), subject to (A) Ingles agreeing to meet the City's standards regarding the outdoor lighting for vehicular canopies; and (B) to following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures (including wall packs) and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; (6) A lot recombination of both subject parcels must be completed before zoning permit issuance; (7) Existing trail connecting the Old Starnes Cove Road neighborhood to the Ingles store will be required to clearly delineate surface with a pervious material such as mulch or gravel; (8) Façade enhancements to the existing shops within the center are required to be completed within 5 years of the Conditional Use Permit approval and shall be architecturally compatible in color and shall incorporate design elements in common with the Ingles structure; (9) Future development of outparcels shall adhere to the design standards outlined in the Façade Renovation addendum provided by the applicant to ensure compatibility with the overall design of the structures within the development; and (10) that the City's standards be met regarding the outdoor lighting for vehicular canopies outlined above by City staff. This motion was seconded by Councilman Smith.

Ms. Tuch responded to various questions/comments from Council, some being, but are not limited to: is there a measurement difference in light trespass between LED footcandles vs. other footcandles; request to go through the lighting survey conducted by City staff; what is the lighting standard for parking lots; and would it be easy to retrofit a vehicular canopy should the standards be higher.

Vice-Mayor Newman, as all of Council, felt that this is a good project and hopes it moves forward; however, he felt it was important for Council to stand by its standards. The developer has presented no evidence to show how this is a unique project that warrants variance from this standard. He would be open, though, to have a larger conversation if it's felt we need a different city-wide standard.

Mayor Bellamy also was open to reviewing the city-wide standard regarding the outdoor lighting for vehicular canopies. She felt some may not understand that Council is only discussing the light under the canopy, not the entire parking lot. She also felt we that the Smoky Park Highway corridor might benefit from more light.

Councilman Smith did not want to set any precedent for one company in town. He felt the 20 footcandle provides adequate safety lighting. He, too, would be open to revisiting the standard regarding the outdoor lighting for vehicular canopies.

Councilwoman Manheimer felt Council may, in the future, wish to revisit the conditional zoning process with regard to limiting Council's ability to completely waive the entire variance vs. only a percentage of the variance.

The motion made by Vice-Mayor Newman and seconded by Councilman Smith carried on a 5-2 vote, with Mayor Bellamy and Councilman Davis voting "no."

**ORDINANCE BOOK NO. 26 – PAGE 464**

Vice-Mayor Newman moved for the adoption of Ordinance No. 3955, with the following conditions: (1) All signs shall meet the HB zoning district setbacks, the site distance triangle requirements and all applicable building code requirements; (2) Window films shall be limited to image displays only; films that incorporate any form of commercial advertisement or trademark must be counted towards the development's signage requirements which are not included in this application; (3) Any changes to the signage included in this plan may require a new review by City Council; and (4) All signs shall comply with the proposed standards and no exceptions or variances are permitted. This motion was seconded by Councilman Russell.

Vice-Mayor Newman felt that the sign ordinance is an arena where a certain degree flexibility is very beneficial to the public. In particular for larger developments we have seen a number of different sign plans developed that are individually tailored for that project that are clearly superior the outcome we would get if we simply stayed with our generic ordinance.

Councilman Bothwell understood about improving the design, but he felt the intent is to curb signs and gradually make our community more attractive. He would like liked Ingles to design their signs that would fit within our sign ordinance.

Mayor Bellamy felt that we need to tailor our community to how we want to grow, recognizing we can make modifications. We have better products due to the conditional zoning tool.

Councilman Smith felt variances should be site specific with evidence of hardship.

The motion made by Vice-Mayor Newman and seconded by Councilman Russell carried on a 5-2 vote with Councilman Bothwell and Councilman Smith voting "no."

City Attorney Oast said that he didn't think we ever had a situation where there was a failure to reach mutual agreement on one condition in a conditional zoning, and the ordinance adopted was subject to that agreement. The way he proposed to implement this is that he will prepare the ordinance in draft form, but unless and until an agreement is entered on the record in the minutes, by letter or personal appearance by Ingles representatives, the ordinance will not be finalized and recorded.

Mr. Ellison said that he has been given authority to agree to all conditions imposed by City Council, including the standard for outdoor lighting for vehicular canopies. He looked forward to proceeding on this project and appreciated the opportunity to be heard.

Councilman Russell thanked Ingles on working with City staff to satisfy the initial variances.

**ORDINANCE BOOK NO. 26 – PAGE** 469

**B. PUBLIC HEARING TO CONSIDER CLOSING COOPER BOULEVARD**

**RESOLUTION NO. 11-61 - RESOLUTION PERMANENTLY CLOSING COOPER BOULEVARD**

Assistant Public Works Director David Foster said that this is the consideration of a resolution to permanently close Cooper Boulevard. This public hearing was advertised on January 28, February 4, February 11 and February 18, 2011.

Mayor Bellamy opened the public hearing at 6:54 p.m.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjacent property owner Ingles Market Inc., represented by Preston Kendall, Real Estate Property Manager, has requested the City of Asheville to permanently close Cooper Boulevard.

The Greenway Commission considered the application for the permanent closure of Cooper Boulevard on January 13, 2011. Attention was focused on the existing dirt walking trail in the rear of the property connecting Old Starnes Cove Road to the rear of the existing Ingles store. The Commission, after some discussion, made the following motion unanimously approving the request for the permanent closure of Cooper Boulevard: "City staff shall research the feasibility of a permanent, multi-use, maintained trail connecting the neighborhood to the new Ingles Market development, and for the Planning & Zoning Commission and City Council to consider that research in their approval of the street closure and zoning modifications." After staff research with our Building Safety Department, it was determined that since the trail with a paved path on the back of the property, they recommended leaving it informal.

There is an existing waterline that accesses up Cooper Boulevard and the Water Department's recommendation was to retain a 20-foot wide permanent easement for maintenance and operation of water lines. However, staff understands that Ingles plans to remove the waterline. If they are not able to remove or relocate the line, then we will retain the easement.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties

Con:

- None

City staff recommends City Council adopt the resolution to permanently close Cooper Boulevard.

Mr. Preston Kendall, representing Ingles Markets, stated that in order to proceed with their project they have to close the road. He said they own both sides and the end of Cooper Road.

Mayor Bellamy closed the public hearing at 6:55 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Manheimer moved for the adoption of Resolution No. 11-61. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 33 – PAGE 382**

**C. PUBLIC HEARING TO CONSIDER AMENDMENT TO CHAPTER 7 OF THE UNIFIED DEVELOPMENT ORDINANCE TO MODIFY PARKING REQUIREMENTS FOR PROJECTS IN A DESIGNATED AREA FOCUSED ON THE RIVER ARTS DISTRICT BUT EXTENDING BEYOND THE INCLUDE NEARBY PROPERTIES**

**ORDINANCE NO. 3956 – ORDINANCE AMENDING CHAPTER 7 OF THE UNIFIED DEVELOPMENT ORDINANCE TO MODIFY PARKING REQUIREMENTS FOR PROJECTS IN A DESIGNATED AREA FOCUSED ON THE RIVER ARTS DISTRICT BUT EXTENDING BEYOND THE INCLUDE NEARBY PROPERTIES**

Mayor Bellamy opened the public hearing at 6:58 p.m.

Planning & Development Director Judy Daniel said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) to modify parking requirements for projects in a designated area focused on the River Arts District but extending beyond to include nearby properties. This public hearing was advertised on March 11 and 18, 2011.

Since the adoption of the Wilma Dykeman Riverway Master Plan (WDRMP) by City Council in 2004, there has been substantial redevelopment and business expansion in the area focused around the River Arts District. Much of this business investment has centered on developing artist studios and galleries, eating and drinking establishments, office uses, and residential uses. The growth of these types of businesses has led to increasing problems with parking, an on-going challenge to individual developers as they struggle to provide sufficient parking on their own parcels for their proposed developments. The challenge is particularly difficult for the smaller lots supporting independent, entrepreneurial businesses.

While developers have struggled to locate sufficient off-street parking there is also a recognition that there appears to be sufficient parking overall throughout the district, although much of it informal and unpermitted. This parking appears to more than accommodate the need for parking in the area for the time being. The staff therefore believes that reducing the off-street parking requirements is a potential solution for one of the primary challenges to adaptively reusing buildings in the area for new businesses. We believe that the change will help stimulate additional redevelopment and investment in this area, an important goal indentified in the WDRMP and the 2025 Master Plan that has become an even higher priority during the economic downturn of the past few years.

This wording amendment proposes a reduction to off-street parking requirements as a means to reduce redevelopment challenges and facilitate the implementation of the City Council adopted Wilma Dykeman Riverway Master Plan and elements of the 2025 Master Plan. The specific proposal is to reduce the requirements for off-street parking on a sliding scale basis depending on the scale of the development in an area defined by a map. The proposed area to be included in that map was reviewed by members of the Asheville Area Riverfront Redevelopment Commission (AARRC) and the River District Design Review Committee (RDDRC) at a joint meeting on February 21, 2011. For the purposes of this report, the area designated on the map is referred to as "River Parking Reduction Area".

*Precedent for reductions in parking:* There are a number of examples where parking requirements have been relaxed in the UDO and these have typically been considered based on the specific zoning districts. For example, properties in the Urban Place District and the Neighborhood Corridor District are allowed a 50% reduction in off-street parking requirements. These districts anticipate a mixed-use development pattern with multi-modal transportation options (wider sidewalks, on-street parking, etc) provided through the district. Other zoning districts, such as the River District, support a wider variety of development patterns but also offer a 20% reduction in off-street parking requirements. The area surrounding the riverfront redevelopment area, while not unified by a common underlying zoning, includes the same goals for a mixed-use district meeting this intent as described and illustrated in the WDRMP. The proposed reduction is not a dramatic increase over reductions already available to most of the properties in those areas.

Another example of a parking reduction is included in the UDO for residential development within one half mile of the downtown Central Business District where developments are not required to provide off-street parking for their developments. In addition, the Central Business District (CBD) has an off-street parking waiver for the entire district. The CBD is a district that identifies as a goal a development pattern that supports multi-modal transportation and pedestrian access. The City of Asheville has been proactive in developing a full range of parking solutions including structured parking, surface parking and on-street to serve patrons of downtown. In some cases the on-street parking is provided by meter and in other areas is reserved by monthly permit. Balancing out this public investment in parking infrastructure are the individual private investors who provide on-site parking when possible, based on market demand. One of the direct benefits of this parking exemption in downtown has been the redevelopment and reuse of smaller properties.

*Long-term considerations:* The long range vision for the River district areas is consistent with other multi-modal and urban development areas of the City and it is expected that the River district areas would similarly benefit from a reduction in off-street parking requirements. The need for an ordinance like this represents a positive change in the riverfront area because it is born out of business successes in the district. The district has grown in the number of studios and now many studios and other businesses are open year-round, not just during the twice yearly studio strolls. Parking will be an on-going concern in the district and certain strategies will have to be identified and implemented to provide long-term solutions. As this evolves there may also need to be City involvement in finding or managing parking areas for use by the district. The downtown area is an example of the success that City support for parking can bring to a district. Parking options are an on-going consideration in downtown that now includes surface parking, parking garages and on-street parking options.

The Planning and Zoning Commission voted 6-0 to recommend approval at their March 2nd meeting. The River District Design Review Committee and the Asheville Area Riverfront Redevelopment Commission also reviewed the proposed amendment and recommend approval of the changes. Members of the RDDRC working jointly with members of the AARRC provided direction on the scope of the amendment and developed the map titled 'River Parking Reduction Area '. City staff also supports the amendment. Both the RRDRC and the AARRC also recommend that staff continue to monitor the situation, with the assistance and input of the AARRC and the RDDRC for a period of 2-5 years, and return with a report to the Council and additional recommendations as needed.

Pros:

- Provides a reasonable reduction in individual parking requirements
- Encourages the continued redevelopment and expansion among existing properties in the district
- Recognizes the importance of informal parking arrangements, shared parking and on-street parking
- Encourages parking and walking to destinations in the district

- Assigns reductions on a sliding scale to support smaller buildings, properties, and projects

Cons:

- On-street parking is sometimes concentrated on streets that have reached or exceeded their capacity
- Access to informal parking is not guaranteed
- This proposed amendment has limitations to solving the parking challenge in the district long-term
- The amendment points to the need for the City of Asheville to participate in providing a parking solution

There is no direct fiscal impact to the city from this short-term strategy. Other long range or more permanent strategies may require financial resources and will be carefully considered at a later time.

City staff recommends City Council adopt the wording amendment.

Mr. Alan Ditmore felt the ordinance amendment does not go far enough to relax parking requirements.

Mayor Bellamy closed the public hearing at 7:05 p.m.

Councilman Davis said that there are a lot of things happening in that area and a reduction in the parking requirements will facilitate those activities. He noted that the City owns a fair amount of land in the River District and there may be some opportunity to create some surface parking.

Vice-Mayor Newman felt the riverfront area is not as built out as downtown (where there is no requirement for parking), but it has a lot of the same qualities. He felt this is a positive step, but encouraged staff to go further in this direction and to look for creative ways to provide community parking to serve the whole area. He felt that in pedestrian oriented areas to place a minimum requirement to set aside a certain number of parking spaces on each individual property is an inefficient use of land.

Councilman Smith agreed with Vice-Mayor Newman and noted the River District Design Review Committee unanimously approved this as well.

Councilman Bothwell agreed that we should look at other opportunities to reduce parking requirements, but it seems to him that in places where parking is appropriately priced, private entities would build a parking facility.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No. 3956. This motion was seconded by Councilman Russell and carried unanimously.

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**Closed Session**

At 7:10 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including

litigation involving the following: State of North Carolina vs. Lisa Roth. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously.

Councilman Russell moved to excuse Mayor Bellamy from the remainder of the meeting. This motion was seconded by Councilman Davis and carried unanimously.

At 7:34 p.m., Councilman Russell moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

**V. UNFINISHED BUSINESS:**

**A. RESOLUTION NO. 11-62 - RESOLUTION AUTHORIZING A PURCHASING AND CONTRACTING POLICY FOR THE CITY OF ASHEVILLE THAT AUTHORIZES THE CITY MANAGER TO EXECUTE CONTRACTS AND AWARD BIDS**

Director of Administrative Services Lauren Bradley said that this is the consideration of a resolution adopting a revised purchasing and contracting policy for the City of Asheville.

During the last several months, in response to economic conditions and a continued need to identify operational efficiencies, staff has worked to identify changes to the City of Asheville's purchasing and contracting policies and procedures. The goals of these changes include:

- Improving the clarity, efficiency, and effectiveness of purchasing and contracting procedures (adding value to the process while reducing costs);
- Making it easier for businesses – especially small businesses – to work with the City of Asheville, and;
- Evaluating affordable opportunities to extend the Living Wage provision to city contracts without impacting the opportunity for small businesses or minority-owned businesses to work with the City.

While most of the changes are administrative in nature, two changes require City Council approval, which include:

(1) Adjusting the contracting authority threshold for department directors and the city manager to better align with other thresholds defined by NC General Statute, and;
(2) Incorporating a Living Wage provision to the terms and conditions of General Service contracts with a value of more than $30,000 but less than $90,000.

**(1) Contract Authority**

North Carolina public contracting statutes establish dollar thresholds associated with informal and formal bid requirements. Informal bids are permitted for construction and repair contracts as well as the purchase of apparatus, supplies, materials and equipment from $30,000 up to the formal limit. Formal bids are required for the purchase of apparatus, supplies, materials and equipment at $90,000 and above. Based on these thresholds, the City of Asheville has established contracting and purchasing requirements and procedures for all city employees.

North Carolina law provides that a city's governing board has the authority to contract on behalf of the municipality. The governing board may delegate its authority to others within the

organization, such as the city manager. The City of Asheville has maintained a City policy that explicitly delegates the authority to contract on behalf of the City to the city manager and department directors based on dollar thresholds. The current thresholds for contracting authority are:

- Department Director – Below $25,000
- City Manager – Below $100,000 for construction/repair; below $50,000 all others
- City Council – $100,000 and above for construction/repair; above $50,000 all others

Because the City's dollar thresholds for contracting authority do not currently align with the dollar thresholds established by North Carolina public contracting statutes, Asheville maintains an additional set of forms, processes, and procedures to accommodate the various levels of approval authority and statutory requirements, which complicates the processing of transactions. As a result, staff is recommending that the City of Asheville's thresholds for contacting authority be adjusted to better align with statutory thresholds. The recommended thresholds for contracting authority are:

- Department Director – Below $30,000
- City Manager – Below $100,000 for construction/repair; below $90,000 all others
- City Council – $100,000 and above for construction/repair; above $90,000 all others

By making this adjustment, the City will gain efficiencies in training staff and processing transactions. Likewise, staff expects this adjustment to decrease the time it takes to process transactions by approximately 25-50%.

**(2) Living Wage Provision**

In 2007, Asheville City Council approved a living wage for city employees of $10.86 per hour without health insurance and $9.50 per hour with health insurance for all full-time and part-time employees. Since 2007, the Asheville/Buncombe Living Wage as provided by Just Economic has increased to $11.35/hour for full or part-time employees without employer provided health insurance and $9.85/hour for full and part-time workers with employer provided health insurance. The City of Asheville currently meets this living wage for full-time employees, and staff anticipates recommending Council adopt the revised living wage for full-time City employees for FY 2011-12.

In 2007, Just Economics also asked City Council to consider incorporating a living wage provision into its contracting requirements with vendors. Staff has researched the options for extending the living wage to vendors who do business with the City of Asheville. Based on that work, staff would recommend a phased approach for implementing a living wage requirement on city contracts for General Services. General Services is the only area of contacting not governed by the general statutes of North Carolina and therefore lends itself to additional provisions by the governing body. It is the area of contracting where other North Carolina cities and counties have implemented the living wage.

A phased approach would allow for review of the effects of the living wage provisions on contracting before the next increase in the amount is raised during the budget cycle period. The phases of this approach are summarized in the table below:

| Tiers | Fiscal Year | Initial Living Wage | Contracting Threshold | City Council Review of Impact & Approval of Next Increase |
|---|---|---|---|---|
| | | | | |

| | | | | |
|---|---|---|---|---|
| **1** | **FY11** | **11.35 without benefits<br>9.85 with benefits** | **$30,000-$90,000** | **April 2011** |
| **2** | **FY12** | **11.35 without benefits<br>9.85 with benefits** | **$30,000-$90,000** | **April 2012** |
| **3** | **FY13** | **11.35 without benefits<br>9.85 with benefits** | **Consider increase above $90,000** | **April 2013** |

As part of the City's revised Purchasing and Contracting Policy, staff would recommend incorporating a living wage provision for General Service contracts within the $30,000-$90,000 threshold. The requirement would be included as part of the standard terms and conditions for these contracts. If a complaint is filed and substantiated against a vendor for non-compliance, the contract would be terminated.

Staff would regularly monitor and provide quarterly updates on the impacts of the living wage provision to the Finance Committee.

The revised policy was considered by the City Council Finance Committee at its meeting on March 15, 2011. The committee was unanimous in its support for adjusting the contract authority thresholds recommended by staff. The committee voted 2-1 in support of the living wage provision.

Pros:

- Changes will significantly improve the efficiency of the City's contracting and purchasing processes, saving City and vendor resources.
- The policy makes it considerably easier to work with local businesses on Small Procurement and General Services transactions.
- Introduces checks-and-balances for transactions by formalizing an audit procedure.

Cons:

- Administration of the living wage provision can be complicated for a vendor that otherwise does not pay a living wage but is required to for City contracts.
- There may be a cost associated with the living wage provision for the City, although research has shown that it is typically minimal. The City will be responsible for paying the living wage associated with a contract, not the vendor.

Staff anticipates that the changes to the purchasing and contracting policy will result in significant efficiencies in staff time and resources. The changes will also improve the ease and efficiency of the process for vendors, cutting down the time to process transactions by approximately 25-50%.

While the living wage provision in the General Services category may have a fiscal impact for the City, research has shown that cost implications are typically minimal and less than 1%. The phase-in approach recommended by staff is intended to provide the opportunity to continually monitor and evaluate any cost impact associated with the change.

Staff recommends proceeding with the changes to policy described above.

At Councilman Russell's request, it was the consensus of Council that the changes be broken down into two parts – one for adjusting the contracting authority thresholds and one for incorporating a living wage provision.

The following individuals spoke in support of incorporating the Living Wage provision as outlined by City staff:

Ms. Vicki Meath, Director of Just Economics
Mr. Craig White, on behalf of the Center for Participatory Change
Ms. Bella Jackson, volunteer with Just Economics
Mr. Mark Hubbard, part-time employee at Just Economics
Mr. Greg Borum, Children's First Communities & Schools of Buncombe County
Mr. James Sheeler, Asheville resident
Ms. Jameson, member of Just Economic

Mr. Alan Ditmore felt Americorps would have a hard time with their mission, which is to try to employ everyone, if they had to pay more per person.

Ms. Leslie Kulba said that the money to pay the living wage will have to come from somewhere – the taxpayers.

In response to Councilman Russell, Ms. Bradley explained that if the contractor is going to put out a bid for work, the contractor would build into the cost what it would cost to pay the living wage for their employees who are working under our contract. It would be a part of the cost to provide the service.

When Councilman Russell asked about the number of city contracts in this range, Ms. Bradley said that staff has been trying to identify contracts in this range that might be affected by this provision. There are many contacts that fall within this threshold in terms of general services, but trying to figure out who might not be paying a living wage currently that has a contract with the City and what might the financial be is ongoing. We do not collect that data from employers now. We do, however, feel that there are a couple that may be affected, i.e., security contract, mowing contract. Those types of services might be affected by a living wage provision.

In response to Councilman Russell, Ms. Bradley said that if the City receives a complaint by an employee of a vendor who would fall under this provision (as any other terms and conditions of a contract) and the City substantiates that complaint, it will be grounds for termination of the agreement.

Councilman Russell supports paying a living wage and was pleased the City does that for their employees. In addition, he does appreciate Just Economics' work. However, from the economic standpoint of a supply-and-demand labor pool and free economics, he could not support the motion.

In response to Councilman Bothwell, Ms. Bradley said this applies to future contracts only and is not retroactive.

Councilwoman Manheimer said that if a living wage is a requirement of the bid, it's a level playing field for all vendors.

Councilman Bothwell said that on the local level when we use taxpayer money to bid down the cost of labor in the City we are doing a disservice to all of the workers in the City.

In response to Vice-Mayor Newman, Ms. Bradley said staff recommends implementing this living wage provision for one year and Council receive a quarterly report. This would be reviewed annually with the budget process.

At the request of Vice-Mayor Newman, Councilman Bothwell and Councilwoman Manheimer accepted the friendly amendment that this living wage provision be reviewed annually and receive quarterly reports.

At the request of Vice-Mayor Newman, Councilman Bothwell and Councilwoman Manheimer accepted another friendly amendment that staff include an analysis of including an index for annual inflation in our living wage number.

Councilman Russell moved to adopt the change adjusting the contracting authority threshold for department directors and the city manager to better align with other thresholds defined by NC General Statute. This motion was seconded by Councilman Bothwell and carried unanimously (Mayor Bellamy being excused).

Councilman Bothwell moved to adopt the change incorporating Living Wage provision to the terms and conditions of General Service contracts with a value of more than $30,000 but less than $90,000, and that the living wage provision be reviewed annually, Council receive quarterly reports, and staff include an analysis of including an index for annual inflation in our living wage number. This motion was seconded by Councilwoman Manheimer carried on a 4-2 vote, with Councilman Davis and Councilman Russell voting "no" (Mayor Bellamy excused).

**RESOLUTION BOOK NO. 33 – PAGE 384**

**B. INTERIM REPORT ON THE MILLS RIVER WATERSHED PROTECTION PROPOSAL**

City Manager Jackson said that there has been a series of meetings involving Asheville and Hendersonville city staff to review the 2002 Mills River Watershed Management Plan, which includes in-depth recommendations and a scope of work to be conducted in terms of protecting this valuable watershed. Staff has concluded at this point that there is a role for the City and have begun looking at best practices and trying to define what that role would be. But there are recommendations that have to do with land conservation, acquisition of land, agriculture extension services, stormwater regulations, etc. Trying to find that appropriate role, when there is an expectation of investment from the water rate-payers, is what we have been striving for and we are trying to partner with Hendersonville and their staff to come up with a recommendation. Mayor Bellamy is also in the process of convening a meeting of Hendersonville, Mills River and Asheville Mayors, managers and utility directors.

We have also received an update that on March 2, the ad hoc committee met and several committees were created. They have postponed taking final action on forming the 501 (c) (3).

He will keep Council updated.

**C. RESOLUTION NO. 11-63 - RESOLUTION OPPOSING CUTS TO THE UNIVERSITY OF NORTH CAROLINA SYSTEM OR THE NORTH CAROLINA COMMUNITY COLLEGE SYSTEM BY THE NC GENERAL ASSEMBLY**

City Attorney Oast said that Council adopted its legislative agenda on January 25, 2011. The North Carolina General Assembly convened for the 2011 regular session on January 26, 2011. By letter dated February 21, 2011, the City transmitted its legislative agenda and supporting materials to the local delegation.

The deadlines for submitting local bills to bill drafting have passed. The deadline for introduction of local bills has passed in the Senate. The deadline for introduction of local bills in the House is March 30, 2011. The deadline for submitting public or general bills to bill drafting is March 24 in the House, and March 25 in the Senate. The deadline for introduction of public bills is April 6 in the House, and April 12 in the Senate.

**I. Asheville Requests**:

The status of the specific requests made by Asheville is reported below:

A. Woodfin/Asheville Boundary Adjustment. This is the proposal to reconfigure Asheville's and Woodfin's corporate boundary lines in the area of the UNC-A. This issue has come up several times before. Last year, at the request of the Woodfin, this proposal was modified to include an adjustment on Merrimon Avenue to accommodate a proposed roundabout at the entrance to the Reynolds Mountain Subdivision, where Asheville and Woodfin have a shared boundary. Merrimon Avenue is a State road in this area, and the work on the roundabout is to be performed by the Department of Transportation. At that time, information regarding the proposed location of the boundary in the roundabout area was not complete, so the proposal was delayed and not acted on. We have been contacted by bill drafting staff, who have advised that no bill will be introduced until the information required for the boundary line in the roundabout area is complete. We have not yet received the information needed, and it appears that this proposal is stalled for another year. We will continue to work with Woodfin and the Department of Transportation to obtain the necessary information, and be ready to proceed when it is supplied.

B. Clarification of Video Service Competition Act. As Council is probably aware, "municipal broadband" is an issue that is receiving much attention in this legislative session. When the City sought clarification last year of the status of municipal intranet facilities provided in connection with a local cable television franchise, it was done as part of a general law bill, rather than a local act. If our particular request is to come up again this year, it would likely again be a provision of a general law. So far, we are not aware of a legislative proposal to address this issue, but will monitor bills and revisions.

C. Clarify Recent Legislation Regarding Financing of Energy Improvements. As of the date of this report, we have seen no bill or other legislative proposal indicating that the revisions suggested last year by the School of Government and the State Treasurer's office to clarify local authority to finance energy improvements through a property assessment program will be addressed. If a bill is introduced, it would likely take the form of a general law. We are checking with the School of Government for any progress on this issue.

D. Annexation Agreements. As of the date of this report, we are aware of no legislative proposals to enhance Asheville's ability to use voluntary annexation. As reported below, there are some bills that have been introduced to limit annexations by North Carolina cities in general, and Asheville in particular.

**II. Other Legislative Matters**:

A. State-wide Energy Efficiency Program. By separate resolution, Council requested that our delegation support legislation for a state-wide energy efficiency program, as proposed by the NC Save$ Energy Alliance. According to a representative from the Alliance, Senator Nesbitt has taken an interest in this proposal, and may not only support such a bill, but may sponsor it. We have supplied him with copies of relevant material and have offered to assist with drafting and research.

B. Annexation. Attempts to limit City-initiated annexation continue. Bills have been introduced in both houses of the legislature to impose a moratorium on annexations until July 1, 2012, and to stay annexations in progress, including those that are in some stage of judicial review. This would affect the Biltmore Lake annexation. In addition, a bill has been introduced to repeal the Biltmore Lake annexation; this bill is similar in effect to bills that have been introduced regarding other cities in North Carolina. A bill has also been introduced to impose a five year moratorium on annexations by municipalities in Buncombe County. The League of Municipalities

is working on the state-wide, or general law, bill. Council is encouraged to contact members of our delegation regarding the local bills, and information is available to assist in that process.

C. Leicester Incorporation. Last week, a bill was introduced to incorporate the Town of Leicester. Several years ago, when a similar proposal was considered, the City Council expressed concern about the size of the area to be incorporated. We are advised that the new proposal is smaller. While a written description is now included in the bill, we need some visual representation of that area to make a sound comparison. The bill that has been introduced makes the incorporation subject to a referendum.

D. Municipal Broadband. On March 8, 2011, Council adopted a resolution opposing bills that would limit local government authority to provide fiber-optic service to residents and citizens. A copy of that resolution has been transmitted to our delegation. As Council knows, Asheville is under consideration by Google for a project that would make very high speed internet available in the area at affordable rates. This has obvious implications for economic development. The bills under consideration would compromise the City's ability to facilitate or participate in that project. We will make our delegation aware of how this bill potentially affects Asheville.

E. Other Bills of Interest. Bill numbers and a brief summary are provided below. Please advise if more information is needed on any bill. To our knowledge, these bills have not been adopted yet.

- HB 308 – Admission Ticket Reform Act. Possible implications for the Civic Center.
- HB 281 – ETJ Restrictions. Would allow residents in ETJ to run for municipal office and vote in municipal elections.
- HB 309 – Selective Vegetation Removal/State Highways. Would allow for removal of vegetation from right-of-way of State highways to enhance the visibility of roadside signs. Would also allow for digital billboards on State highways.
- SB 279 – Clarify definition of renewable energy resources to include wood.
- SB 281 – Municipal Service Districts. Allow the establishment of municipal service districts for the purpose of converting private streets to public streets.
- SB 291 – Catawba County/Local Bid Preference. Allows Catawba County to award contracts for public construction projects to local bidders under certain circumstances.
- SB 305 – Carrboro/Housing Discrimination. Allows Carrboro to adopt ordinances prohibiting housing discrimination of basis of sexual orientation, gender identification, or gender expression.
- HG 332 – Clarify Development Moratorium Authority. Provides that development moratoria are not permitted for the purpose of developing new or amended plans or ordinances.
- SB 315 – Roadside Campaign Signs. Allow political campaign signs in State highway right-of-way.

- SB 318 – Repeal Plastic Bag Ban in Coastal Areas. As title indicates; applies only to those coastal counties authorized to ban plastic bags.

- HB 349 – Promote Green Roofs on Buildings. Authorizes certain incentives, including relief from storm-water fees, for green roofs.

This report is provided for information purposes. If further information is needed, please let us know.

**III. Resolution Opposing Cuts to the University of North Carolina System, or the North Carolina Community College System, by the NC General Assembly:**

At the Mayor's request, a resolution has been prepared to oppose cuts to the university or community college system by the General Assembly. Cities that are locations for these institutions are being strongly encouraged by the North Carolina Metropolitan Mayors Coalition to consider resolutions in support of these institutions.

When Vice-Mayor Newman asked for public comments, none were received.

At the suggestion of Council members, City Attorney Oast said that he would provide Council with copies of the bills and/or more information regarding (1) SB 205 - Carrboro/Housing Discrimination, which allows Carrboro to adopt ordinances prohibiting housing discrimination of basis of sexual orientation, gender identification, or gender expression; (2) HB 349 – Promote Green Roofs on Buildings, which authorizes certain incentives, including relief from storm-water fees, for green roofs; and (3) HB 309 – Selective Vegetation Removal/State Highways, which would allow for removal of vegetation from right-of-way of State highways to enhance the visibility of roadside signs - would also allow for digital billboards on State highways.

Vice-Mayor Newman moved to oppose the bill that has been introduced to repeal the Biltmore Lake annexation (because the City has followed the rules) and express that sentiment to our legislators. This motion was seconded by Councilman Davis and carried on a 4-1 vote, with Councilman Russell voting "no" (Mayor Bellamy excused and Councilwoman Manheimer recused by general consent).

Vice-Mayor Newman said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 11-63. This motion was seconded by Councilman Smith and carried unanimously (Mayor Bellamy excused).

**RESOLUTION BOOK NO. 33 – PAGE 405**

**VI. NEW BUSINESS:**

**A. ORDINANCE NO. 3957 - BUDGET AMENDMENT TO FUND THE REPLACEMENT OF HVAC EQUIPMENT AT PACK PLACE EDUCATION, ARTS & SCIENCE CENTER**

Director of Administrative Services Lauren Bradley said that this is the consideration of City funding and an associated budget amendment, in the amount of $284,000, for the replacement of HVAC equipment at Pack Place Education, Arts & Science Center.

The Pack Place Board of Trustees has approached the City of Asheville to explore a funding partnership that would address a critical capital improvement need at Pack Place Education, Arts & Science Center. According to its Boards of Trustees, Pack Place is

immediately facing necessary replacement of HVAC equipment in order to continue operation. The Board has provided a report outlining the project details.

The total cost of the project is estimated to be $284,000. The Board of Trustees anticipates that it could potentially allocate up to $90,000 toward the project from its repair and reserve fund, which has a total balance of $120,000. However, the Board has indicated that this allocation may limit its ability to cover future capital maintenance and repair needs. The repair and reserve fund is funded by interest earned from Pack Place's endowment.

The City of Asheville has a direct and long standing partnership with the Pack Place Education, Arts & Science Center. In the early 1980s, the City acquired the property on Pack Square formerly occupied by the Pack Memorial Library and the Plaza Theaters. In addition to the land, there are several easement and party wall agreements that are part of the package of real estate interest that comprise this property.

As part of a public/private partnership to redevelop this area, the City of Asheville funded the debt service that provided for the construction of Pack Place. City voters approved the issuance of $3.0 million in general obligation (GO) debt for the Pack Place Education, Arts & Science Center on September 23, 1986. The debt was issued in December 1988 and combined with the issuance of $5.4 million in street and sidewalk GO bonds that was also approved by the voters, bringing the total debt package to $8.4 million. The loan term was 20 years at an interest rate of roughly 7.0%.

Around the same time in 1988, the City leased the property to the Pack Place Education, Arts & Science Center, a non-profit corporation. Pack Place renovated the old library and constructed new facilities on the old theater property and adjacent land using the City-issued debt. The City and Pack Place are co-owners of the improvements that were made pursuant to the lease.

In July 1993, the City took advantage of a lower interest rate environment to refinance several of its outstanding debt issuances, including the $8.4 million that was issued in December 1988 for Pack Place and city infrastructure. The total debt package issued in 1993 was for $11.5 million. The loan term was 15 years at an interest rate ranging from 4.0% to 4.8%. The final payment on this debt was made in fiscal year 2007-08 in the amount of approximately $180,000.

Buncombe County provides an annual funding allocation for Pack Place operations. It is anticipated that the county's allocation for FY 10-11 will be around $400,000. Pursuant to the original lease and subsequent lease renewals, Pack Place is responsible for all costs associated with the facility's capital maintenance.

Pack Place has been and continues to be one of the centerpieces of Asheville's revitalized downtown. The existence of Pack Place has been a catalyst for much of the redevelopment that has occurred in the surrounding area, bringing people to downtown, which in turn supports local businesses.

This item was considered by the City Council Finance Committee. The Committee voted unanimously to provide a capital contribution to Pack Place in the amount of $284,000 to fully fund the HVAC replacement project, with funding coming from capital project savings that would otherwise be appropriated in the City's Fiscal Year 2010-11 Capital Improvement Program (CIP).

The action does not directly relate to City Council's annual strategic operating plan.

Pros:

- Addresses a critical capital need in an important cultural and civic institution that serves the public; if left unaddressed, facility closure may be needed during the summer months, which would have negative economic and community impacts.

Cons:

- Reduces the amount of capital project savings available for programming in the FY 2010-11 capital improvement program.

There is currently $450,000 in capital project savings that staff has previously recommended building into the FY 10-11 capital improvement program (CIP). Fully funding the Pack Place HVAC project reduces the amount of capital project savings available for programming in the FY 2010-11 CIP by just over 60%. This funding would otherwise be used toward the City's pay-as-you-go capital programs like road resurfacing, facility maintenance, sidewalk maintenance and sidewalk construction.

Staff would recommend (1) that the City partner with Buncombe County to provide a capital contribution for the balance of project costs that Pack Place is unable to cover with its repair and reserve fund. Based on the memorandum provided by the Pack Place Board of Trustees, the City's share would be around $100,000; and (2) that in the near future City Council consider and clarify the City's role in capital maintenance and improvements at the Pack Place Education, Arts & Science Center and then update the lease agreement to reflect any changes in the City responsibilities.

When Vice-Mayor Newman asked for public comments, none were received.

Councilman Russell moved to adopt a budget amendment, in the amount of $284,000, to fully fund the HVAC replacement project, with funding coming from the capital project savings, due to the fact that the City is co-owner of the building and we have not made a contribution since fiscal year 2007-08. This motion was seconded by Councilman Bothwell.

Councilman Bothwell noted that the Art Museum has great plans for expansion and the HVAC project will not only be an immediate fix, but handle the expansion project as well.

Councilman Smith expressed concern about taking money from the CIP when Council has not seen a plan on how to address the other infrastructure needs. Director of Administrative Services Lauren Bradley responded that unfortunately staff has not talked with Council about staff's proposal of the CIP yet. It's about a $17 Million CIP. She didn't want Council to feel that by taking some portion of this that we are hamstringing the CIP because Council will see at the next budget briefing that we have a solid CIP for next year. It will mean, though, that incremental amounts will have to be taken out of the categories that are already built.

Councilman Russell explained to Council why the Finance Committee supported allocating the entire 284,000 amount to fully fund the HVAC project.

Vice-Mayor Newman felt it was important that before any further funding requests are made that Council discuss the City's role in capital maintenance and improvements at the Pack Place Education, Arts & Science Center.

The motion made by Councilman Russell and seconded by Councilman Bothwell carried unanimously (Mayor Bellamy excused).

**ORDINANCE BOOK NO. 26 – PAGE 477**

**B. CITY COUNCIL E-MAIL**

Director of Information Technology Jonathan Feldman said that this is for Council consideration and discussion regarding available electronic mail options.

The following is background information and analysis on City Council's choices for the email system that they use. Staff stands ready to implement whatever is desired by City Council.

**Option 1. Externally-provided email for Council members**

- Not subject to City policy, including restrictions on political activity.
- Inexpensive or free.
- Difficult for City staff to archive or review.

As an enhancement to this option, it may be more user friendly to the public if the City offers a city "alias" for council members who do opt to continue to use their own email addresses. This alias would relay the email, so, for an account of "councilmember1@mail.com", citizens who sent an email to "councilmember1@ashevillenc.gov" would be relayed to the "councilmember1@mail.com" address. The council member would then reply from that address.

**Option 2. City-provided email for Council members**

- **Archiving**: Allows for an increased level of public accountability because of automated archiving; emails are retained in the archive for access by staff, even when deleted by a council member.
- **Policy**: Emails are subject to the City's email policy.
- **Campaigning**: It is staff's understanding that City resources may not be used for political campaigns, therefore this email account would not be able to be used for campaign activity.
- **External email and open records**: If City Council members use a separate account for political activity, that account is still subject to open records requests.

As little as $50 per year; as much as $350 per year, depending upon how many council members choose the City-provided email option.

City Council discussed the different options available and would advise City Manager Jackson which, if any, option they would like to have. City staff would then notify the public of the new e-mail address and, if City related, encourage the public to contact that member of Council at the new e-mail address.

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Ms. Linda Pannullo spoke to Council about the deficit.

Mr. Alan Ditmore spoke to Council about municipal contraception funding.

The following claims were received by the City of Asheville during the period of February 4 – March 10, 2011: AT&T (Streets), Amy Underwood (Inspections), Iris Schneider (Police), PSNC (Water), AT&T (Water), Jean Penland (Streets), Elizabeth Cheesborough (Water), Richard Mire (Water), David W. Highsmith Jr. (Transit), Ward Griffin (Sanitation), Robert Gunter (Sanitation), Michelle Rumfelt (Water) and Chris Glover (Water). These claims have been referred to Asheville Claims Corporation for investigation.

**VIII. ADJOURNMENT:**

Vice-Mayor Newman adjourned the meeting at 9:02 p.m.

Magdalen Bulleson
CITY CLERK

MAYOR

Tuesday – March 29, 2011 – 6:30 p.m.
T.C. Roberson High School

Community Meeting – South Asheville

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; and City Attorney Robert W. Oast Jr.

Absent: None

Mayor Bellamy opened the meeting and welcomed the audience. She then introduced City Council members and explained the questions and answer process.

Director of Administrative Services Lauren Bradley explained the City's strategic goals and financial realities. She then explained the constraints to which the City is subject, as well as the level of service delivery we provide and the volume of citizens and visitors to whom we provide them. She said that Asheville has taken advantage of significant grant opportunities, including, but not limited to: (1) 15 buses replaced; (2) an investment of $7.5 million from ARRA funds into capital (7 sidewalk projects); (3) two new fire stations; (4) Livingston Street Center; (5) Sullivan Act capital allocation; and (6) Azalea Road project. Despite the challenging financial picture, there are reasons for optimism. We have diverse, engaged and innovative citizens, we are taking advantage of partnerships and grant opportunities, and we are actively involved in the capital improvement planning.

Public Works Director Cathy Ball outlined the stormwater management structural improvements in Fiscal Year 2011 (1) Ditching on Caribou Road; (2) Ditching on London Road; (3) Installing under drains on Park Avenue; (4) Replacing culvert on Taft Avenue; (5) Repairing ditch line on Allen Street; (6) Replacing trench drain on Peachtree Street; and (7) Dingle Creek Wetlands and Stream Restoration. Regarding good housekeeping for stormwater, staff has cleaned 1124 storm drains and have swept 70 miles of curb. Future initiatives include the implementation of additional recommendations of the Dingle Creek Master Plan, along with the continued good housekeeping measures. She showed videos on the Dingle Creek Wetland Creation Project and the importance of stormwater management.

Director of Transportation Ken Putnam discussed transportation related projects and provided Council and the audience with a sidewalk update. He said the transportation (mobility) is found in the N.C. Dept. of Transportation Streets & City Streets; MPO Transportation Plans; Bicycle Master Plan; Transit Master Plan; Parking Plan; Greenways Master Plan; and Pedestrian Master Plan. Sound Transportation objectives include integration, Balance, Multi-Modal, Long-Range Planning, Partnerships and Multi-Year Funding. He provided statistics from the 1999 Pedestrian Plan, which was updated in 2005. He then explained the prioritization process criteria used, which is Priority Zones (Zoning Jurisdiction); Proximity to Community Destinations; Proximity to Transit Stops; Needed Linkages; Feasibility of Construction; and Major Thoroughfares and Connector Streets. Recently completed projects include (1) Hendersonville Road, from West Chapel Road to Forest Street – 2,700 linear feet; (2) Linden Street, from Birch Street to Royal Pines Drive – 1,100 linear feet; (3) Pinchot Drive/Springside Road, from existing greenway to T.C. Roberson High School – 1,000 linear feet; and (4) Long Shoals Road, from Hendersonville Road to I-26 – 16,100 linear feet. Potential projects in the South include (1) Brevard Road, Ridgefield Boulevard to Rocky Ridge Road (Biltmore Square Mall area); (2) Overlook Road, Springside Road to Briarcliff Drive; (3) Overlook Road, Long Shoals Road to Springside Road; (4) Hendersonville Road, I-40 to the Blue Ridge Parkway (U-5189); and (5) Springside Road. He will continue the Documentation Process, continue implementing the Pedestrian Plan, formalize Prioritization Process (Point Values), "score" the Top 50 Potential Projects, plot Projects and Link to Website and continue working towards integrating all the master plans. As Asheville continues to redefine transit, it will (1) listen to the community; (2) focus on sustainability; (3) provide more frequent and reliable service; and (4) supply more and better Information.

Mayor Bellamy then opened up the meeting for questions and answers explaining that all answered questions would be delegated to City staff for response and posting on the City's website. Questions/comments responded to consisted of : Looking 5-10 years forward, what strategic action is the city considering to develop and diversify revenue streams; what are the current plans for expansion of NC 25-A (Sweeten Creek Rd) to four lanes; concern of Springside Drive traffic safety and road conditions; any chance Sanitation could return to twice monthly brush pickup; need for sidewalks from Carolina Day to Long Shoals; and since Airport Road is a gateway to the city, why is there always excessive signage and no enforcement.

Mayor Bellamy and Council members expressed their appreciation for the community involvement.

At 7:45 p.m., Mayor Bellamy adjourned the meeting.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – April 12, 2011 – 3:00 p.m.
First Floor North Conference Room

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Esther E. Manheimer

**Enterprise Funds**

Director of Administrative Services Lauren Bradley said that she would not review all the City's Enterprise Funds, but just those that have policy considerations. The other Enterprise Fund's expenditures and revenues expect to be flat for next fiscal year.

She then briefly reviewed the Water Rate Study, Parking Fund and Transit Fund.

Water Rate Study: Rate Structure Modifications: include (1) Raise commercial and multi-family volumetric rates relative to single family (a) Provide more equitable cost recovery; and (b) Initial target – 85% of Residential rate for Multi-Family and Small Commercial; (2) Separate Irrigation from Residential rate (a) Targets true elective usage; and (b) Raise to 120% of Residential rate in FY 2013; and (3) Raise Wholesale rates to keep up with overall rate increases.

Using a chart, she explained the FY 11-12 recommendation for the water rates. There is no change in the residential customers, but increases to the commercial charges, multi-family charges and wholesale customers.

Parking Fund Outlook: (1) Parking revenues are projected to exceed expenses by $358,740 in FY 11-12 (a) Includes $500,000 transfer to the Transit Fund; and (b) Includes transfer of $406,260 in operating funds to parking capital improvements; and (2) FY 12-13 projection for revenues over expenditures is $275,000 (includes full debt service for 51 Biltmore and $500,000 transfer to Transit Fund). She then showed a chart of parking capital improvements.

Transit Fund Outlook: (1) Loss of $600,000 in State funding; partially off-set by decreases in expenditures (a) Increases General Fund transfer by $350,000 for a total of approximately $985,000; (2) Budgeting for a slight increase in fuel costs despite efficiencies gained from hybrids and new diesels; (3) Union contract under negotiation this summer; and (4) RFP for management transit services may increase costs. She then showed a chart of transit capital improvements.

Golf Fund Outlook: (1) Current expenditure over revenue projections would require a $150,000-$200,000 transfer from the General Fund; and (2) Indentifying opportunities for cost savings and revenue enhancements to minimize or avoid a General Fund transfer in FY 11-12 (a) Recommendations brought back to Council with the proposed FY 11-12 budget. The Recreation Board moved for staff to look at options to operate Golf Course with no general fund transfer and that they look at an RFP for operation of Golf Course by outside vendor.

Ms. Bradley and other City staff responded to various questions/comments from Council, noting that some questions which could not be readily answered would be provided to Council. Questions/comments made, but not limited to, the following: with the loss of state funding over

the past few years, what is the trend of the Transit Fund; why was the transit route that the new MAHEC building on Hendersonville Road turned down by the Transit Commission; what are the benefits of the Automated Vehicle Location System for buses; request for a list of transit eliminated route deviations; and request for additional information on the irrigation for the back 9 at the Golf Course.

**General Capital Improvement Program**

Mr. Bradley then reviewed the General Capital Improvement program five year overview and program detail for FY 11-12.

Capital Improvement Planning Categories include: (1) Multi-modal: Streets, sidewalks, greenways, pedestrian safety projects, Transit system investments; (2) Infrastructure: Bridges, retaining walls, sewer projects, traffic signal poles, infrastructure associated with water lines; (3) Buildings & Facilities: Building and facility maintenance, roof replacements, recreation center maintenance, park maintenance, Civic Center renovations, Urban Trail maintenance; (4) Equipment & Technology: Radio infrastructure and radio replacements, software upgrades and replacements; and (5) Vehicle Replacement: Vehicles and other rolling stock.

She showed charts of the CIP 5-year history (2007 – 2011) which totaled $41.1 million over five years; the CIP 5-year projection (2012-2016) which totals $59.45 million over five years; the CIP program for FY 2011-12; the CIP revenues for FY 2011-12 which totals $17.55 million in FY 11-12.

Multi-Modal: Street and Pedestrian Safety Program (1) Street Resurfacing: $1.02 million, 5.90 miles resurfaced (a) Compared to FY 10-11: 30% increase in funding and 13% increase in linear feet resurfaced; (2) Street rebuilds: $293,000 (Montford Avenue project) (a) Compared to FY 10-11 - No street rebuild projects were funded in the last five-year CIP; (3) Pedestrian Safety: $35,000 - Haywood Street and Montford Avenue ped signals and crosswalks; (4) Sidewalk maintenance: $250,000, 1.68 miles maintenance work (a) Compared to FY 10-11: Funding remains at FY 10-11 levels and $811,000 in sidewalk maintenance personnel and related costs budgeted in operating budget; (5) New sidewalk construction: $1.8 million, 1.82 miles new sidewalk (a) Compared to FY 10-11: (i) Five times the funding for in-house construction materials; (ii) Nearly three times the linear feet output; and (iii) Addition of $1.3 million in debt financing yielding 7,500 linear feet of new sidewalk; (6) Total General Fund sidewalk program: $2,861,000 - Compared to FY 10-11: Nearly double total funding for sidewalk program; (7) Greenway development: $1.45 million, 1.5 miles (a) Debt financing used to fund construction of the Beaucatcher/Overlook greenway; and (b) Land acquisition funds for Town Branch greenway; and (8) Transit projects: $450,000 - Security cameras on buses, Automated Vehicle Location System, bus shelter replacement, and system signage.

Infrastructure (1) Infrastructure associated with water lines: $660,224 (a) Completion of the Azalea Road project funding, South Lexington and Melrose improvements; (2) Sewer projects: $130,000, Airport Road (a) Opportunity to recover costs through MSD's sewer extension policy; (3) Retaining wall projects: $300,000, Cherokee/Sunset; (4) Bridge replacement: $900,000, Wild Cherry; and (5) Traffic signal metal pole replacements: $120,000, 2 intersections.

Building and Facilities Program: (1) City Hall Exterior Repairs: $5,500,000; (2) Roof replacements: $200,000, 4 fire stations; (3) Facility maintenance projects: $805,309 (a) Compared to FY 10-11: No facility maintenance or roof projects were funded and FY 11-12 projects include Municipal Building chiller replacement, HVAC conversion, Fleet building ventilation system; (4) General Fund contribution to Civic Center renovations: $300,000; (5) Public Art (a) maintenance: $40,000; and (b) acquisitions: $47,807 (represents 1% of eligible projects over five year CIP); (6) Recreation center maintenance: $100,000 (a) Stephens- Lee maintenance, ADA improvements in all centers; and (7) Park maintenance: $200,000 (a) Playground replacement, court resurfacing.

Equipment, Technology and Vehicle Replacement: (1) Public safety radio replacements: $200,000; (2) Development Services Center software replacement: $125,000; and (3) Vehicle replacement: $2,610,000 (a) Compared to FY 10-11: 50% increase in funding and nearly $700,000 dedicated to alternative fuel vehicles (i) $550,000 matching funds for Clean Cities grant; and (ii) 1.3% reduction in fleet carbon footprint.

Green CIP: (1) Achieve a 4% carbon footprint reduction each year for 20% total reduction over five years; and (2) Funded by "revolving" utility savings generated by energy efficiency projects for investment into additional projects (a) Streetlight retrofit project provides significant utility savings for five-year Green CIP; and (b) $900,000 projected for second phase of streetlight retrofit project in FY 11-12.

Unfunded Capital Projects: (1) City Projects (a) Scaling up multi-modal investments, facility maintenance program, and vehicle replacement; (b) Radio system infrastructure upgrade: $9,000,000 (i) Will be considered In future CIP planning; and (c) Montford Fire Station: $1,000,000 (a) Potential to be budgeted in FY 13-14 if Sandhill Fire Station does not move forward; and (2) Community Projects (a) Process for considering other community projects - Pack Place capital needs, multi-modal projects, etc.

Throughout discussion, Ms. Bradley and other City staff responded to various questions/comments from Council, noting that some questions which could not be readily answered would be provided to Council. Questions/comments made, but not limited to, the following: for the past CIP five year history, what is the cost savings in operations as a result of the capital investments; explanation of street rebuilds vs. street resurfacing; explain selection of street rebuilt of Montford Avenue; are bike lanes included in street rebuilds; where is Dr. Martin Luther King Jr. Drive and Stratford Road on the list for resurfacing or rebuilding; what is the length on Montford Avenue that will be rebuilt; status of Safe Rides to School program; request to look at Long Shoals Road area for Safe Rides to School project; request to have information relayed to residents about sidewalks on Overlook Road; request for map showing alignment of the Town Branch greenway, along with breakdown of financial costs; information on whether Beaucatcher/Overlook greenway and Town Branch greenways can be delayed; request for information on the mix of alternative fuels; are there any plans to replace current vehicles with electric vehicles; where is the Sand Hill Fire Station to be located if the Biltmore Lake annexation proceeds; explanation of why public service radios are necessary opposed to use of cellular phones; request for some alternatives for the $9,000,000 radio system infrastructure update in the future CIP planning; has there been any thought on what the City will do with the W.C. Reid Center if the Housing Authority grant is not received; does the Asheville Police Department evidence room have security cameras; are the needs of the Grove Arcade Building part of the 5-year CIP; and request that the Finance Committee review in July what the exploratory first steps would be and what projects might be part of a bond referendum, providing Council with a realistic timeframe.

It was the consensus of Council to amend Public Art Board policy guidelines to include that any public art purchased should be from regional or local artists.

Ms. Bradley noted that she has provided Council with the Strategic Operating Plan with the projected progress and cost implications per Council's request. If Council had no objections, she would place the adoption of the Strategic Plan on the April 26 agenda for adoption.

Ms. Bradley also provided Council with a memorandum responding to action items that were identified by City Council during the March 22, 2011 budget work session.

Regarding WNC Community Media Center (formerly URTV), Ms. Bradley explained the City's funding for that program of 60/40 split of PEG fees. The City has budgeted $30,000 for next fiscal year; however, they are requesting $115,000 or they will have to close their doors at the end of this month. The City was not notified of their closing except from a press release they

issued. It was the consensus of Council to have (1) City Attorney Oast review the management contract which expires at the end of 2011 for the clause that allows the City to perform a financial and/or equipment audit and that said audits be handled as quickly as possible; and (2) Ms. Bradley contact the executive director and the board chair and state that the City has budgeted $30,000 and with whatever the County budgets can they come up with a budget and a proposal that meets the funding available to them. She was also directed to ask URTV management for a letter in writing that they will close at the end of April, 2011, noting that there will be no payment made in May of 2011.

At 4:37 p.m., Mayor Bellamy adjourned the budget briefing.

Tuesday – April 12, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Mayor Bellamy gave the invocation.

**I. PROCLAMATIONS:**

**A. EMPLOYEE RECOGNITIONS**

City Manager Jackson recognized (1) Public Works Director Cathy Ball and Stormwater Division of Public Works Employees: McCray Coates, Ray Tracy, Chuck Watson, Ric Ledford, Monte Clampett, Danny Gibson, Arthur Hensley, Woody Ledford, John Fly, Toby Shelton, Stephanie O'Conner and Keisha Lipe for their work on the 2010 Award for Large Sedimentation and Erosion Control Program. The City of Asheville stormwater services division has worked very hard to provide great customer services to the citizens of Asheville by working closely with design professionals, contractors, developers and private citizens to reduce loss of sediment from construction sites. This sedimentation could potentially enter our streams. City staff has provided the community with material to update the citizens on the changes in our new ordinances. Following an audit performed by NCDENR, the City of Asheville was awarded the Large Program of the Year for sedimentation and erosion control. To be considered as a large program, dedication of 3 or more employees to the erosion and sediment control efforts is required. The selection of the large program of the year begins with a recommendation from the local regional engineer for NCDENR. This recommendation is then voted on by all the NCDENR regional engineers based on work performance; and (2) Senior Police Officer Louis Tomasetti and Senior Police Officer Brandon Morgan for receiving their Advanced Law Enforcement Certificate. In accordance with the criteria established by the North Carolina Criminal Justice Education and Training Standards Commission, Senior Police Officers Louis Tomasetti and Brandon Morgan were approved for their Advanced Law Enforcement Certificate by a vote of the full Commission at their last meeting. The Commissions Professional Certificate Program is designed to reward and recognize officers who continually strive to better themselves

professionally, by attending various schools and training sessions, above and beyond what is currently mandated by the State of N.C. Officers must also have several years of full-time experience as well. The certificate is the highest such honor awarded by the State, and recognizes education, training, and experience by the recipient.

On behalf of City Council, Mayor Bellamy thanked the employees on what they do on behalf of the City of Asheville and City Council. She was proud of City staff and looked forward to highlighting more accomplishments.

**B. PROCLAMATION PROCLAIMING APRIL AS "CHILD ABUSE AWARENESS MONTH"**

Mayor Bellamy read the proclamation proclaiming April, 2011, as "Child Abuse Awareness Month" in the City of Asheville. She presented the proclamation to Mr. Bill McGuire, representing Child Abuse Prevention Services Inc., who briefed City Council on some activities taking place during the month. Ms. Tammie Shook, representing the N.C. Dept. of Social Services Child Protection Services Division, provided Council with a "Pinwheel for Protection."

**C. PROCLAMATION PROCLAIMING APRIL AS "PARKINSON DISEASE AWARENESS MONTH"**

Mayor Bellamy read the proclamation proclaiming April, 2011, as "Parkinson Disease Awareness Month" in the City of Asheville. She presented the proclamation to Mr. Dick Poore, President of the Chapter of the American Parkinson's Disease Association, and Mr. Jim Hall, who briefed City Council on some activities taking place during the month.

**D. PROCLAMATION PROCLAIMING APRIL 17-23, 2011, AS "CLEANING FOR A REASON WEEK"**

Vice-Mayor Newman read the proclamation proclaiming April 17-23, 2011, as "Cleaning for a Reason Week" in the City of Asheville. He presented the proclamation to Ms. Karan Walton, from Tidy Environments Janitorial Service Inc., who briefed City Council on some activities taking place during the week of Cleaning Homes for Women with Cancer.

**E. PROCLAMATION PROCLAIMING APRIL AS "LANDSCAPE ARCHITECTURE MONTH"**

Vice-Mayor Newman read the proclamation proclaiming April, 2011, as "Landscape Architecture Month" in the City of Asheville. He presented the proclamation to Ms. Stephanie Pankiewicz, NCASLA Mountain Section Chair, who briefed City Council on some activities taking place during the month.

**F. PROCLAMATION PROCLAIMING APRIL 10-16, 2011, AS "NATIONAL VOLUNTEER WEEK"**

Mayor Bellamy read the proclamation proclaiming April 10-16, 2011, as "National Volunteer Week" in the City of Asheville. She presented the proclamation to Ms. Sarah Wohlmuth the Director of Hands On Asheville, United Way's Volunteer Center, who briefed City Council on some activities taking place during the week.

**RECOGNITION OF RECIPIENTS OF GOVERNOR'S AWARD FOR VOLUNTEER SERVICE**

Mayor Bellamy said that National Volunteer Week is a time for us to stop and think about what volunteers contribute to the efforts of local government, non-profits and faith-communities to improve the lives of our citizens. In addition to proclaiming this week National Volunteer Week,

Mayor Bellamy took time to recognize 2 groups of local volunteers who have received special recognition for their efforts over the past year. These groups are the Buncombe County recipients of the 2011 Governor's Award for Volunteer Service.

The first group is made up of the 30 students of the 2011 City of Asheville Youth Leadership Academy who earned their nomination for their involvement in over 25 volunteer projects that include packing food at MANNA, preparing dinners for the residents of the ABCCM Women's Shelter, planting trees along Livingston Street, and tutoring children at the I Have a Dream program, among others. Ms. Erika Germer, CAYLA program Coordinator introduced the students.

Mr. Everett Clark, Rev. Eddie Morgan and the Crossroads Team from the First Baptist Church were the other Buncombe County nominees. They were nominated for their work over the past five years to support members of our community who are experiencing homelessness. The Crossroads Team has worked with the Asheville-Buncombe Homeless Initiative and the Veterans Administration to co-host the VA Stand Down and Project Connect. In addition, their support for people experiencing homelessness at the First Baptist Church has created a safe and welcoming space, offering regular outreach & meals to people experiencing homelessness, space for women with the Room at the Inn shelter, day-time activities for men staying at the Veterans Quarters.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 22, 2011; AND THE COMMUNITY MEETING HELD ON MARCH 29, 2011**

**B. RESOLUTION NO. 11-65 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE LICENSE AGREEMENT WITH BELL ATLANTIC MOBILE OF ASHEVILLE INC. FOR ADDITIONAL ANTENNAS AND EQUIPMENT AT 57 CRESTWOOD DRIVE, ARDEN, N.C.**

Summary: The consideration of a resolution authorizing the City Manager to execute an amendment to the License Agreement between Bell Atlantic Mobile of Asheville, Inc. and the City of Asheville for additional antennas and equipment at 57 Crestwood Drive, Arden, North Carolina.

The City of Asheville owns and operates a telecommunications tower located on property at 57 Crestwood Drive in Arden. In March 2009, Asheville City Council authorized the lease of tower space and adjacent ground space to Bell Atlantic Mobile of Asheville, Inc. At this time, Bell Atlantic has made a request to increase the number of antennas located on the tower and increase the ground space lease area in order to improve service to their cellular customers.

Currently, Bell Atlantic Mobile of Asheville, Inc. operates 9 antennas with 9 coax lines at the 90 foot elevation of the tower. The request includes increasing the number of antennas to 12 total at the 90 foot elevation, with 12 corresponding coax lines. The current ground lease area measures approximately 437 square feet; this proposed amendment would increase the ground lease area by 3 square feet in order to accommodate one additional cabinet.

A third party vendor of Bell Atlantic, Vertical Solutions, has performed a structural engineering analysis of the tower with the proposed loading, and has certified that tower can accommodate this additional loading. This property also contains a water reservoir, and staff has confirmed with Water Resources that this request does not impose any conflict in current water operations at this site.

In order to compensate for this additional loading, Bell Atlantic has offered to increase their current rental rate by $1000 for a total of $33,448 per year with 4% annual increases. Staff

has reviewed this proposed rate increase and found it to be representative of fair market value for this type of installation.

This action complies with the City Council Strategic Operating Plan in that strategic tower asset management presents the City with revenue enhancements. These revenue enhancements can help the City's telecommunications operations become more sustainable and fiscally responsible.

Pros:

- Enhanced revenue through the license fee income
- Maximized vacant space on existing tower infrastructure

Con:

- None

Revenue from the rental of tower space at the 57 Crestwood Drive location is recorded in a capital project designated to build funding for maintenance and the eventual replacement of the City's telecommunications towers. The additional revenue from this amendment to the license agreement with Bell Atlantic Mobile of Asheville will be recorded in that project. There is no impact to the City's General Fund budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute an amendment to the license agreement with Bell Atlantic Mobile of Asheville, Inc. on behalf of the City of Asheville.

Ms. Nikki Reed, Real Estate Manager, responded to Councilman Bothwell's question regarding the price.

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**C. RESOLUTION NO. 11-66 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE EARTH DAY AND HEALTHY KIDS DAY EVENT ON APRIL 16, 2011**

**RESOLUTION NO. 11-67 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ALL GO WEST EVENT ON APRIL 23, 2011**

**RESOLUTION NO. 11-68 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BIG LOVE FEST EVENT ON MAY 1, 2011**

**RESOLUTION NO. 11-69 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL ON MAY 27, 28 AND 29, 2011**

**RESOLUTION NO. 11-70 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BEER CITY FESTIVAL ON JUNE 4, 2011**

**RESOLUTION NO. 11-71 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT DOWNTOWN AFTER 5 EVENTS ON MAY 20, JUNE 17, JULY 15, AUGUST 19 AND SEPTEMBER 16, 2011**

**RESOLUTION NO. 11-72 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE VEGFEST ON AUGUST 7, 2011**

**RESOLUTION NO. 11-73 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE GOOMBAY FESTIVAL ON AUGUST 26, 27 AND 28, 2011**

**RESOLUTION NO. 11-74 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CLIPS OF FAITH BEER AND FILM TOUR ON SEPTEMBER 9, 2011**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Earth Day & Health Kids Day event on April 16, 2011; All Go West on April 23, 2011; the Big Love Fest on May 1, 2011; the Mountain Sports Festival on May 27, 28 & 29, 2011; the Beer City Festival on June 4, 2011; the Downtown After 5 outdoor special events in 2011; the Asheville VegFest on August 7, 2011; the Goombay Festival on August 26, 27 & 28, 2011; and the Clips of Faith Beer and Film Tour on September 9, 2011.

- The Lake Eden Arts Festival in conjunction with Mountain Roots Management has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Asheville Earth Day & Healthy Kids Day and allow for consumption at this event.

  Asheville Earth Day & Healthy Kids Day will be held on Saturday, April 16, 2011, from 11:00 a.m. to 10:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green, Reuter Terrace, Vance Median and Raised Lawn areas including Spruce Street between the intersections of South Pack Square & College Street, North Pack Square between the intersections of Biltmore Avenue and South Pack Square, and within the City Hall/Courthouse Parking Lot, with alcohol specifically limited to the designated areas as referenced on the accompanying site maps, limited to the hours of 2:00 p.m. to 10:00 p.m.

- Dogwood Alliance in conjunction with Yellow Dog Entertainment, LLC has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the All Go West Festival and allow for consumption at this event.

  The All Go West Festival will be held on Saturday, April 23, 2011, from 12:00 p.m. to 10:00 p.m. within the boundaries of Westwood Place & Waynesville Ave.

- Just Economics has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Big Love Fest and allow for consumption at this event.

  The Big Love Fest will be held on Sunday, May 1, 2011, from 1:00 p.m. to 8:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green, Reuter Terrace,

Vance Median and Raised Lawn areas including South Market Street between the intersections of South Pack Square and College Street, North Pack Square between the intersections of Biltmore Avenue and South Pack Square, South Pack Square between the intersections of Biltmore Avenue and South Market Street and within the City Hall/Courthouse Parking Lot.

- Mountain Sports Festival, Inc. has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Mountain Sports Festival and allow for consumption at this event.

  The component of the Mountain Sports Festival requesting alcohol will be held on Friday, May 27, 2011, from 5:00 p.m. – 10:00 p.m., Saturday, May 28, 2011 from, 10:00 a.m. – 10:00 p.m. & Sunday, May 29, 2011, from 12:00 p.m. to 6:00 p.m. within the boundaries of Carrier Park, as per the event area limits referenced on the accompanying site map.

- Big Brothers Big Sisters WNC in conjunction with GSCBA & ABA has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Beer City Festival and allow for consumption at this event.

  The Beer City Festival will be held on Saturday, June 4, 2011, from 12:00 p.m. to 6:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green, Spruce Street between the intersections of South Pack Square and College Street, and within the City Hall/Courthouse Parking Lot.

- The Asheville Downtown Association has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Downtown After 5 events and allow for consumption at these events.

  Downtown After 5 will be held on Friday, May 20, June 17, July 15, August 19 and September 16, 2011, from 5:00 p.m. to 9:00 p.m. within the boundaries of the 100 block of Lexington Avenue, as per the event area limits referenced on the accompanying site map.

- Goat Mountain Sanctuary has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Asheville VegFest and allow for consumption at this event.

  The Asheville VegFest will be held on Sunday, August 7, 2011, from 12:00 p.m. – 9:00 p.m. within the boundaries of Battery Park Avenue & Otis Street as per the event area limits referenced on the accompanying site map.

- YMI Cultural Center has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Goombay Festival and allow for consumption at this event.

  The Goombay Festival will be held on Friday, August 26, 2011, from 12:00 p.m. to 11:00 p.m., Saturday, August 27, 2011, from 11:00 a.m. to 11:00 p.m. and Sunday, August 28, 2011, from 10:00 a.m. to 6:00 p.m. within the boundaries of Eagle Street, South Market Street and Wilson Alley, as per the event area limits referenced on the accompanying site map. The Goombay Festival will also be held on Friday, August 26, 2011, from 10:00 a.m. to 9:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green, the City-County Parking Lot and within a designated area of Spruce Street between the intersections of College Street & Court Plaza, as per the area limits referenced on the accompanying site map.

- The Asheville Downtown Association in conjunction with New Belgium Brewing Company has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Clips of Faith Beer and Film Tour and allow for consumption at this event.

  The Clips of Faith Beer and Film Tour will be held on Friday, September 19, 2011, from 7:00 p.m. to 10:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green, the City-County Parking Lot and within a designated area of Spruce Street between the intersections of College Street and Court Plaza, as per the area limits referenced on the accompanying site map.

These actions have no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for the Lake Eden Arts Festival, Dogwood Alliance, Just Economics, Mountain Sports Festival, Inc., Big Brothers Big Sisters WNC, Asheville Downtown Association, Goat Mountain Sanctuary and YMI Cultural Center.

Con:

- Potential for public safety issues

Overtime pay for Asheville Police officers per sponsorship agreement for Downtown After 5 is $3,800 and for the Goombay Festival it is $25,215. There is no fiscal impact for Asheville Earth Day, All Go West, Big Love Fest, Mountain Sports Festival, Beer City Festival, Asheville VegFest, and Clips of Faith Beer and Film Tour.

City staff recommends City Council adopt the resolutions authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Asheville Earth Day & Health Kids Day, All Go West, Big Love Fest, Mountain Sports Festival, Beer City Festival, Downtown After 5, Asheville VegFest, Goombay Festival, and Clips of Faith Beer and Film Tour.

**RESOLUTION NO. 11-66 - RESOLUTION BOOK NO. 33 – PAGE 409**
**RESOLUTION NO. 11-67 - RESOLUTION BOOK NO. 33 – PAGE 412**
**RESOLUTION NO. 11-68 - RESOLUTION BOOK NO. 33 – PAGE 415**
**RESOLUTION NO. 11-69 - RESOLUTION BOOK NO. 33 – PAGE 418**
**RESOLUTION NO. 11-70 - RESOLUTION BOOK NO. 33 – PAGE 421**
**RESOLUTION NO. 11-71 - RESOLUTION BOOK NO. 33 – PAGE 424**
**RESOLUTION NO. 11-72 - RESOLUTION BOOK NO. 33 – PAGE 427**
**RESOLUTION NO. 11-73 - RESOLUTION BOOK NO. 33 – PAGE 430**
**RESOLUTION NO. 11-74 - RESOLUTION BOOK NO. 33 – PAGE 434**

**D. ORDINANCE NO. 3958 - TECHNICAL BUDGET AMENDMENT IN THE HOUSING TRUST FUND**

Summary: The consideration of a technical budget amendment in the Housing Trust Fund in the amount of $400,000 from program income and Housing Trust Fund reserves to fully budget planned expenditures for FY 2010-11.

In FY 2000-01, the City established the Housing Trust Fund to provide financing for affordable housing initiatives in the City. Each year since FY 2000-01 City Council, as a part of the budget process, has approved an annual transfer from the General Fund to the Housing Trust Fund. This transfer, along with program income from loans that are being re-paid, provides ongoing funding for affordable housing initiatives. In the current fiscal year, the adopted General Fund transfer to the Housing Trust Fund was $300,000.

In prior fiscal years, the loans or notes receivable that the City disbursed to the developers of affordable housing were recorded on the City's general ledger as balance sheet transactions, not as expenditures. As a part of its FY 2009-10 financial audit, the City's external auditors recommended that the City modify its internal processes to record the issuance of notes receivable in the Housing Trust Fund as expenditures and budget for them accordingly.

As noted above, the adopted budget for FY 2010-11 already includes a $300,000 appropriation in the Housing Trust Fund that reflects the General Fund transfer for this year. The table below outlines the total expected expenditures in the Housing Trust Fund in FY 2010-11, including administrative expenses as well as all disbursements of loan proceeds that Council has already approved.

| | |
|---|---|
| Administrative Expenses | $52,000 |
| MHO Larchmont (loan approved April 2010) | $400,000 |
| Beaucatcher Commons (loan approved March 2010) | $200,000 |
| Shiloh Road – first draw (loan approved March 2011) | $48,000 |
| | |
| Total | $700,000 |

Therefore, in order to provide budget authorization for these expenditures of $700,000, the Housing Trust Fund budget needs to be increased by $400,000. The City expects to receive $150,000 in revenue from program income in the current fiscal year, which will provide a portion of the funding for the budget amendment. The remaining $250,000 in budget authorization will come from reserves in the Housing Trust Fund.

This action complies with the City Council Strategic Operating Plan goal of "Operate the City of Asheville to the highest levels of fiscal responsibility."

Pro:

- Provides the required budget authorization for expenditures that are expected to occur in the Housing Trust Fund in FY 2010-11.

Con:

- None.

All of the disbursements that have occurred or are planned prior to June 30, 2011 have already been approved by City Council. This technical budget amendment will simply bring the City into compliance with the recommendations made by the external auditors from Dixon Hughes.

City staff recommends City Council adopt the technical budget amendment in the Housing Trust Fund in the amount of $400,000 from program income and Housing Trust Fund reserves to fully budget planned expenditures for FY 2010-11.

**ORDINANCE BOOK NO. 26 – PAGE 479**

**E. RESOLUTION NO. 11-75 - RESOLUTION AUTHORIZING THE CITY MANAGER TO IMPLEMENT A FARE-FREE WEEK TO PROMOTE TRANSIT DURING THE STRIVE NOT TO DRIVE WEEK OF MAY 16-20, 2011**

Summary: The consideration of a resolution authorizing the City Manager to implement a fare-free week to promote transit during the Strive Not to Drive Week, which is May 16-20, 2011.

Twenty years ago Bike to Work Day was launched in Asheville. Over the years this event evolved into Strive Not to Drive (SNTD) Week focusing more broadly on a variety of

transportation alternatives to the single-occupant car, including carpooling, walking, and public transit.

Strive Not to Drive Week is an annual event encouraging people to avoid driving their car for a day or part of a day in order to experience the benefits and opportunities of walking, bicycling, riding the bus, carpooling, telecommuting, etc.

This year the Transit Sub-committee of the SNTD Committee would like to offer commuters the following options:

1. Bus fare would be free throughout the week, which will incentivize commuters to take the SNTD pledge and take the bus at least some days that week.

2. Throughout the week the sub-committee will promote ***Bring a Friend and Win,*** which will encourage current bus pass holders to bring one or more friends with them on the bus. At the Transit Center, both the pass holder and friend will be able to fill out a form and enter a drawing for a free monthly pass. The SNTD sub-committee will award two in each category, for a total of four free passes. Pass holders can enter as many times as they bring a friend, but each friend has to be different to accomplish the purpose of getting pass holders to get new people on the bus. The cost of the four free passes will come from the Transportation Demand Management program budget.

3. The sub-committee also plans to target certain constituencies during the week to get them on the bus, including seniors and Black Mountain/Swannanoa residents.

These options support the City of Asheville 2010/11 Strategic Plan by helping to promote emission-reducing options such as "integrate and implement a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit, greenways, and other system improvements resulting in a funding priority list."

Pros:

- The fare-free period would help promote the Strive Not to Drive activities.
- Free-fare during the SNTD week would promote and encourage choice riders to try the transit system.
- The fare-free would potentially attract new riders.

Con:

- The system would lose about $10,000 in revenue from cash and ticket books.

The system would lose about $10,000 in revenue from current riders that pay with cash and ticket books. Operating expenses for FY 2010-11 are currently less than the budgeted amount and City staff expects this trend to continue for the remainder of the year. Based on this information, the anticipated loss in revenue can be absorbed within the approved operating budget.

Staff recommends a resolution authorizing the City Manager to implement a fare-free week in order to promote the Strive Not to Drive activities.

**RESOLUTION BOOK NO. 33 – PAGE 437**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Smith moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously.

**III. PRESENTATIONS & REPORTS:**

**IV. PUBLIC HEARINGS:**

**A. CONTINUATION OF PUBLIC HEARING TO CONSIDER CLOSING SEVERAL PORTIONS OF UNOPENED RIGHTS-OF-WAY AND CITY STREETS WITHIN THE MONTFORD COMMONS DEVELOPMENT AREA**

Mayor Bellamy said that she has received a request from Mr. Vincent Smarjesse, representing Montford Commons, LLC, requesting a continuance until June 14, 2011, in order to resolve certain issues. Therefore, Councilwoman Manheimer moved to continue this public hearing until June 14, 2011. This motion was seconded by Councilman Bothwell and carried unanimously.

**A. PUBLIC HEARING TO CONSIDER AMENDMENT TO CHAPTER 7 OF THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH A TABLE OF PERMITTED USES**

**ORDINANCE NO. 3959 – ORDINANCE AMENDING CHAPTER 7 OF THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH A TABLE OF PERMITTED USES**

Mayor Bellamy opened the public hearing at 5:36 p.m.

Planning & Development Director Judy Daniel said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) to establish a table of permitted uses. This public hearing was advertised on April 1 and 8, 2011.

Planning staff was directed by the City Council to prepare the table, consolidating into one location all the uses allowed in the various zoning districts of the UDO by right (Permitted uses = P), permitted with certain additional standards (Special / USSR = S), those requiring approval by the City Council (Conditional = C), and those expressly prohibited in certain districts (EXP). Most municipalities are moving towards the adoption and utilization of a single table which many find easier to reference than separate lists included within the development standards of each zoning district. This amendment will create both a new table, but also proposes to retain the existing lists, at least for the time being.

Creating the initial version of the table was not a difficult task; but creating that table revealed numerous discrepancies between the districts and the standards for some uses. These necessitated changes such as establishing a common name for listed uses in each district and verification of districts and standards for all USSR and Conditional uses. The work revealed a host of inaccuracies and other problems that had accumulated within the UDO since its adoption. This is not an unusual situation for any large and complex ordinance, but it added considerably to the time required to complete the work initiated by the creation of the table of permitted uses.

Further, during the time of preparing these changes, a court case in North Carolina precipitated a need to reconsider the use of "expressly prohibited" uses, except in a very few circumstances. The majority of those things listed as "uses" were actually related to development standards more than use, so those prohibitions have been moved to the development standards

sections of the districts. Since the River District is set up differently (all uses are permitted unless expressly prohibited), the express prohibitions were left there.

These changes cumulatively require extensive modifications to Article 2, Definitions; Article 8, General Use Districts; and Article 16, Uses by Right, Subject to Special Requirements and Conditional Uses. The range of these technical and substantive decisions included:

1) Article 2 - Definitions:

   - Many use types, although similar, had different names in different districts. These were consolidated and one common name used.
   - Some listed uses susceptible to interpretation were not defined, and definitions were added.
   - Antiquated language was rewritten for some uses and definitions updated.

2) Article 8- Individual District Regulations. Multiple changes in Article 2 and in Article 16, led to the need for numerous technical and substantial changes in Article 8:

   - Some uses listed as USSR or Conditional uses, were actually not allowed in Article 16, and were *deleted*; some uses listed as permitted, were actually USSR uses and were *changed*; and some uses listed as USSR in Article 16, were not listed and were *added*.
   - Some uses were listed with added restrictions, and these were changed into a USSR use for consistency.
   - Some use types were combined because they were very similar in character and impact and did not need separate listing.

3) Many changes were required in Article 16 (Uses Permitted by Right Subject to Special Standards/Conditional Uses). Examples include:

   - With the full range of uses listed comprehensively in the Table, it became apparent that some uses that were not allowed in certain districts probably should be allowed, either by right or as a "USSR" or a Conditional use. New standards are recommended for those uses.
   - The standards for many uses needed "tweaking" to adjust to current concerns or to add new districts.
   - Certain use types grafted in over the years led to a disorderly listing of uses rather than the intended alphabetical listing. The list has been reordered.
   - Article 16 includes a listing of the uses and the applicable districts included before the actual uses. There were discrepancies between this list and the use standards. The USSR list is proposed to be eliminated as it is the most extensive, and the must susceptible to errors. The applicable districts are deleted from the Conditional uses list.

One very important and positive thing became evident when this comprehensive table of uses was created. Other than in the single-family residential districts and the highest intensity industrial districts, all other zoning districts are already fit the definition of mixed-use districts. A range of multi-family dwelling options are already allowed in most of these districts, although perhaps not encouraged with incentives. So as the City begins to contemplate more substantive changes to the UDO to encourage more mixed-use development the task will be to create incentives and design standards, as the residential potential is already in place.

In summary, the nature of the changes are substantially technical but not substantive and are designed make the UDO a bit more "user friendly", and a means to determine what uses are allowed in what zoning districts more easily. She also noted that the staff will next be considering and evaluating the potential for "collapsing" some zoning districts that are essentially similar in nature and uses.

Regarding compliance with City Council's goals and plans, both the Comprehensive Plan and strategic Council goals call for transparency and partnerships. This amendment proposes to strengthen the integrity of the information contained within the UDO and to make this information readily available to the public, the staff, and other interested parties.

The concept of this wording amendment was initially reviewed by the Planning & Economic Development Committee in July 2010 and again in more detail in December 2010, where the staff received direction to move forward on implementing these changes.

The staff went through the changes in detail with the Planning & Zoning Commission over three meetings in January, February, and March. With minor changes, they recommend approval of these modifications. The Commission has recommended continuing to allow the following uses in the Industrial District, which the staff had recommended deleting as permitted uses (thinking that they were not really appropriate in a district that allows heavy industrial uses): Crematories for human remains, Stadiums and arenas, Places of worship, Funeral establishments, and Theaters.

Pros:

- Makes necessary corrections to missing, conflicting, and duplicative references
- Provides a consolidated reference for all users

Con:

- Table is large and complex, color coding could assist but not available for reproduction (although will be available on-line)

City staff concurs with the Planning & Zoning Commission and recommends that the Council adopt the ordinance as proposed.

Mayor Bellamy closed the public hearing at 5:43 p.m.

In response to Mayor Bellamy, Assistant Planning & Development Director Shannon Tuch said that they will amend the ordinance to clarify the term telecommunication facilities to distinguish between the actual towers vs. antennas.

Also in response to Mayor Bellamy, Ms. Daniel said that where places of worship is mentioned to include "including, but not limited to churches, synagogues; or mosques."

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3959, as with the two amendments requested above. This motion was seconded by Councilwoman Manheimer and carried unanimously.

## V. UNFINISHED BUSINESS:

### A. DISCUSSION OF EARLY VOTING SITES FOR 2011 CITY COUNCIL ELECTION

Mayor Bellamy said that the Buncombe County Board of Elections is in the process of preparing their budget for 2011-12 and has asked if City Council will want early voting sites for their election this year.

At the February 8 and March 8, 2011, City Council meeting, City Council asked for additional information to determine if they will request the Buncombe County Board of Elections (BOE) to prepare for early voting sites for their election this year. That requested information is below: (1) The discrepancy from the $39,306 associated with the November 2009 election was a typographical error. The correct amount the four additional early voting locations for one week before the General Election in 2009 was $29,306 (which is close to the guideline of $1,000 per day per site); (2) The City of Asheville pays for all of the actual costs associated with their elections, which would include the early voting sites at the BOE Office; (3) 17,281 voters voted in the 2009 election, with 1,349 voting early at BOE Office and 2,008 people voting in the 4 additional early voting locations; (4) 2009 Saturday voting: (A) 261 voted on the 1st Saturday – 217 at the 4 locations; 44 at BOE Office; and (B) 281 voted on the 2nd Saturday – 224 at the 4 locations; 57 at BOE Office; and (4) 15,528 voters voted in the 2007 election, with 1,061 voting early at BOE Office.

Information from the February 8 and March 8 meetings was also available in order to assist Council to make their determination.

Councilman Davis felt that early voting is important and more sites is a good way to foster better turnout; however, given the City's economic outlook, he felt he could not support additional voting sites, especially since there is early voting at the BOE office. Therefore, he moved to only have early voting at the BOE office. This motion was seconded by Councilman Russell.

When Mayor Bellamy asked for public comment, no one spoke.

The motion made by Councilman Davis and seconded by Councilman Russell failed on a 2-5 vote, with Mayor Bellamy, Vice-Mayor Davis, Councilman Bothwell, Councilwoman Manheimer and Councilman Smith voting "no."

Vice-Mayor Newman felt that spending $24,000 (4 additional sites x 6 days) to decide the governance for the next four issues and to encourage greater civic involvement. He then moved to request the Buncombe County Board of Elections add four additional early voting locations six days before the general election in the north, south, west and east areas for a total appropriation of $24,000. This motion was seconded by Councilman Bothwell.

Mr. Mark Cates, resident of Asheville, opposed spending the additional $24,000 due to crucial cuts and raising fees necessary to serve the community

Councilman Smith felt that having access to voting is one of our primary responsibilities as a government. We are setting priorities and this is a priority that voters have access to the process. He feels the additional early voting sites are money well spent.

The motion made by Vice-Mayor Newman and seconded by Councilman Bothwell carried on a 5-2 vote, with Councilman Davis and Councilman Russell voting "no."

### B. FEDERAL LEGISLATIVE UPDATE

Mayor Bellamy said that there has been an almost 17% cut of Community Development Block Grant funds. More information will be forthcoming to see how it will impact our community. Vice-Mayor Newman, Chairman of the Housing & Community Development Committee, noted that they had planned for a 10% reduction.

Mayor Bellamy said that at the April 26 meeting there will be an update regarding the state legislative items. She asked for the following to be addressed and what those bills will mean to our community: independent Airport Authority, Biltmore Lake annexation, Buncombe County district elections, and no annexation authority for five years. She noted that the City was not formally notified that any of those bills were submitted. She was concerned about that process. City Attorney Oast said that he may be travelling to Raleigh to personally talk with some of our legislators.

## VI. NEW BUSINESS:

### A. ORDINANCE NO. 3960 - ORDINANCE ADOPTING THE FEES & CHARGES MANUAL FOR 2011-12 BUDGET

Director of Administrative Services Lauren Bradley said that this is the consideration of an ordinance adopting the Fees & Charges Manual for 2011-12.

The proposed FY 2011-12 fee adjustments were reviewed by the Council Finance Committee on March 15, 2010, and discussed with the full Council at the March 22, 2010 budget worksession.

For FY 11-12, it was staff's goal to minimize fee impacts to city residents and businesses while looking for opportunities to more fully recover the cost of providing specific services where feasible. This direction is consistent with City Council's Strategic Operating Plan goal to look for opportunities for fee relief. As a result, adjustments to General Fund fees adjustments are limited in scope and address a small number of areas where there was opportunity to more fully recover the cost of services.

In addition to the General Fund fee adjustments, staff has proposed adjustments to some fees in the Parking Fund, most of which are designed to bring greater uniformity to the rate structure in the City's three parking garages. The additional revenue generated by the Parking Fund fee changes is expected to be approximately $68,000. There are also some minor fee changes proposed in the Civic Center, Golf, and Transit Enterprise Funds.

Finally, staff is requesting that Council approve the FY 2011-12 Water Resources fee adjustments that are being recommended by Raftelis Financial Consulting. These adjustments, which will create more equitable cost recovery across the water customer classes, include increases to the commercial and multi-family volumetric rates and the wholesale rate. There are no changes being proposed to the residential rate in FY 2011-12. This recommendation is consistent with City Council's Strategic Operating Plan goal to improve the affordability of water rates for residential customers. The additional revenue generated by the Water Fund fee changes is expected to be approximately $340,000.

Staff is requesting that Council take action on the fee recommendations so that the additional revenue from the fee adjustments can be included in the Manager's Proposed Budget, which is scheduled for presentation to Council on April 26. By approving the fees now, Council will also provide staff will time to begin communicating fee changes to citizens, customers and stakeholders so they are aware of changes that will be implemented on July 1. Every department will be responsible for developing and implementing a communications plan to let citizens know about fee changes.

General Fund fee changes recommended by the Finance Committee would produce approximately $37,900 in additional revenue, which amounts to less than one-half of one percent of the General Fund budget. These fees are designed to more fully recover the expenditures associated with providing specific services. She highlighted: (1) Fire inspection fees in the ETJ (a) brings service to full cost recovery by adding a 20% surcharge to inspections in the ETJ; (2) Parking Garage rates (a) adjust rates to bring consistency between garages; and (b) most rate adjustments made to Civic Center garage (i) hourly: 50 cents to 75 cents; (ii) monthly: $70 to $80; and (iii) monthly discounted rates: $35 to $40; (3) Special Event discount rate (a) in FY 10-11, City Council approved a 75% discount on permit fees for non-profits holding special events; and (b) recommendation to cap events eligible for waiver to six per year per non-profit organization; and (4) Domestic Partner Registry (a) registry active by May 1, 2011; and (b) fee: $45.00.

Water Rate study recommended changes (1) Raise commercial and multi-family volumetric rates relative to single family (a) provide more equitable cost recovery; (2) Separate irrigation from residential rate (a) targets true elective usage; and (b) raise to 120% of residential rate in FY 2013; and (3) Raise wholesale rates to keep up with overall rate increases. She then reviewed the chart of the water rate recommendation increases, noting that the residential fee would remain the same.

Staff recommends that Council adopt the proposed FY 2011-12 fee proposals and staff will work to notify customers of any rate changes between now and July 1, 2011.

Councilman Bothwell moved to adopt the proposed fee adjustments for the Fiscal Year 2011-12 fiscal year. This motion was seconded by Councilwoman Manheimer.

Mr. Mark Cates was concerned that City Council was raising fees again and felt that they were generous with other people's money.

When Councilman Davis brought up a co-sponsorship request of Eblen Charities, it was the consensus of Council to have staff obtain more information on the request and related expenses and report back to City Council.

Councilwoman Manheimer said that the fees were discussed in the Finance Committee and they do reflect full cost recovery. Regarding water rates, the recommendation was to move towards full cost recovery and through the study realized that our residential rate payers are subsidizing multi-family and commercial users. We are trying to move toward a more equitable fee arrangement regarding water.

Councilman Russell agreed that many of these fees are full cost recovery; however, regarding water, he felt that the City should consider lowering our cost for residential users.

Vice-Mayor Newman too would like to see the residential rate structure go down; however, the infrastructure needs a lot of work. At this time he thinks the money is needed for the capital improvements to the system, but there will be a point when we have done enough to level off.

In response to Councilman Russell, Mr. Lex Warmath, Vice-President of Raftelis Financial Consultants Inc. (consultant conducting the Water Rate Study), explained that the cost structure for Asheville is higher than some other communities due to the age of the system and a whole range of factors. During the study they looked at whether there was cost justification for level of discount for the very large users compared to everyone else, but particularly to the residential customer. Very few utilities offer that level of discount. Typically an industrial rate might be in the 15-30% discount at max, but Asheville is at 55-60%. Regarding retaining and bringing in business, if there are very large water users, they will be more interested in

guaranteed water supply than cost difference, noting there are not that many large water users anymore.

Councilman Bothwell felt that raising the commercial rate will make it more cost effective to conserve for those businesses who still use a lot of water. Steering our community towards better conservation is an economic driver for the future. Fresh water is in very short supply internationally. He believed in 20 years, businesses will be lining up to find places that have sufficient water supply. Encouraging conservation through our rate structure will ultimately benefit the City.

Mayor Bellamy could not support the motion. She felt we should be going up small increments and talking with our large water users in advance so they can plan for any increase. Presently, some large water users are struggling to stay open. When industry looks to locate in an area, they do ask about water rates compared to other cities. She also felt that other fees proposed are not consistent in what Council discussed in their retreat.

The motion made by Councilman Bothwell and seconded by Councilwoman Manheimer carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Russell voting "no."

**ORDINANCE BOOK NO. 26 – PAGE 539**

**Recycling**

Public Works Director Cathy Ball presented Council with another reiteration of the waste stream reduction proposal. At the March 22 worksession, staff came before Council with a proposal to increase the capacity for recycling by providing a 95-gallon container, based on pilot studies done. We also proposed to develop a semi pay-as-you-throw program that would allow people to pick different sizes of trash cans. For various reasons, Council was concerned even incrementally about increasing costs and passing those onto our residents. Staff had the opportunity to meet with an individual and bring back another proposal for Council's consideration. Staff is not asking Council to approve a contract with RecyleBank or approve an amendment with our current recycling contractor, but asking Council to consider increasing the recycling fee to help support this kind of joint concept of a two-fold approach: One is to bring in some kind of RecycleBank type program (this is a rewards program) and offer individuals to take advantage of discounts based upon how much they recycle; and (2) Providing the 95-gallon recycling containers. The purpose is not to convince Council that RecycleBank is the best route, but they have met with them and feel they have some good things to offer, but did want to present to Council their concept because there are real numbers based on Asheville.

She said the concept of the program is that more an individual recycles, the more opportunity they have to get real rewards in terms of things our community has to offer. She showed a chart of the real impact and durable results from Houston, Texas; Wichita, Kansas; Rochester Hills, Michigan; and Hollywood, Florida.

The real rewards are things that people use every day. Any company who is a national sponsor has to pay to be a part of the program and they also have to have a green component to their business. There would be over 2,000 reward partners and she showed sample reward offers. The program is also set up to allow about 40% of local and regional businesses to participate. They would not have to pay an annual amount to do that, but they would have to offer some type of discount to their restaurant or their place of business in order to participate in the program. People can also donate the RecycleBank points to support local schools or non-profit organizations. In terms of Asheville (after specifically looking at the pilot program), the benefits of participating citizens would be $89 to $138 annual reward value per household, based on 2.5 points per pound of material recycled. The pilot study indicated that just by adding the 95-

gallon containers we increase recycling by about 7%. By adding RecycleBank we have conservatively said we can add another 3% for a total increase of 10% in recycling.

She reviewed the following financial summary:

Additional Costs: City capitalizes carts - $200,000
City pays RecycleBank (marketing) - $105,000
City pays CMI additional (technology improvements to vehicles)- $38,000
Tipping fee savings ($130,000)
Net annual cost of $213,000.

The citizens would need to pay an additional $.65/month or $7.80 per year to generate revenue to support the annual cost of $213,000.

Prior to staff increasing the existing contract or entering into an agreement with RecycleBank or another type of vendor, staff would have to come back to City Council for approval.

There was considerable discussion regarding this proposal with Ms. Ball responding to various questions/comments, some being, but are not limited to: what is the total cost of the 95-gallon carts; how many years would the debt service payment be for $1.5 Million; how long will the carts last; with the new service, will the pick-up service change; does everyone need to participate and if not if there a higher per month charge for those that do; confirmation that 80% of Asheville already recycles; confirmation that the contractor will add three more lines of what can be recycled; what neighborhoods were included in the pilot recycling program and were the differences in the recycling from each neighborhood; what type of education was included in the pilot recycling program; was there 100% resident participation in the pilot recycling program; how does RecycleBank know the amount of recycling collected in order to award the points; what is the duration of the contracts with RecycleBank and the current provider; would everyone be charged the additional recycle fees whether they wanted to participate or not; and how user friendly is redeeming the points and what is the percentage of people that do redeem them.

In response to Mayor Bellamy, Ms. Ball said that the goal is to increase the types of materials that can be recycled and the amount of material people can recycle.

Councilman Russell moved to support proceeding with the waste stream reduction proposal of a RecycleBank type program. This motion was seconded by Councilman Bothwell.

Mr. David Wasserman supported this type program in that the City would be giving residents the opportunity to offset the increase.

In response to Vice-Mayor Newman, Ms. Ball said that for currently households pay $2.95/month or $36/year for recycling. Currently to run our recycling program is $940,000 and the fees to equal that amount are $2.65. The other 30 cents is used for our administration/ marketing costs and things done internally.

Vice-Mayor Newman felt this is a new innovative idea and concept; however, he would prefer to learn more about it before recycling fees are raised.

Councilman Russell withdrew his motion to support proceeding with this type program.

Mayor Bellamy scheduled this topic on the April 26 worksession and suggested other options be presented as well.

**Closed Session**

At 7:09 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: Cherie Byrd, City of Asheville, Asheville Police Department and Eric Lauffer. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously.

At 7:21 p.m., Councilman Smith moved to come out of closed session. This motion was seconded by Councilman Bothwell and carried unanimously.

**B. WEIRBRIDGE VILLAGE LAND USE INCENTIVE GRANT REQUEST**

**RESOLUTION NO. 11-76 - RESOLUTION SETTING A PUBLIC HEARING ON APRIL 26, 2011, TO CONSIDER A LAND USE INCENTIVE GRANT AGREEMENT FOR WEIRBRIDGE VILLAGE**

At Councilwoman Manheimer's request, Councilman Russell moved to recuse Councilwoman Manheimer from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Smith and carried unanimously.

Community Development Director Jeff Staudinger said that the owners/developers of Weirbridge Village have applied for a Land Use Incentive Grant per the policy adopted by Council on March 8, 2011. This report summarizes their application and reports on eligibility and points.

The Weirbridge Village project entails the development of 280 units of rental housing located at the intersection of Hendersonville Road and Racquet Club Road in the City of Asheville. No commercial or other mixed use development is cited in the proposal.

The project, as presented to staff, appears to meet the Eligibility Requirements,

- Equity: A 20% equity contribution is required. The project developers indicate they have contributed 20.67% equity to the project. This includes unreimbursed expenses from the original PUD process.
- Energy Star Certification: The developers indicate the project will achieve Energy Star certification.
- Inside city limits, within ¼ mile of designated major highways: The project is located in an eligible location.
- Legal Costs; the developer must agree to assume all legal costs if the LUI is challenged: The developer has agreed to assume all legal costs if the Land Use Incentive policy is challenged.

The project proposes the following Public Benefit Elements:

- Workforce Housing units with assured affordability at that rent level for a minimum of ten years: *50% of total units* (10 points)
- Green Building/Energy: *Energy Star certified* (5 points)
- Located within the Sustainability Bonus Area: *Yes* (5 points)

The project therefore scores 20 points. Based on this score, the project would be eligible for a two year Land Use Incentive Grant.

The project meets the following 2010-11 Strategic Plan Goals: (1) *Affordable*: Create and preserve affordable rental and homeownership opportunities in Asheville. The project is directly related to the opportunity for public/private partnerships and innovative financing to incentivize affordable housing development; and (2) *Green and Sustainable*: Set and develop a plan for implementing a community reduction goal. The project is being built to Energy Star standards, and will be certified by Energy Star.

The project meets applicable Master Plans in the following ways: (1) The project supports the goals of the *2009 City Transit Master Plan* by its location "along major transit corridors..." ; and (2) The project supports the goals of the *2009 Sustainability Management Plan*, which calls for the City to encourage Transit Oriented Development. According to sources cited by the developer, "the minimum density at which rapid transit can operate efficiently is approximately 12 units per acre. The Weirbridge Village development is 17 units per acre." The development is recycling during construction, and post construction will offer both recycling and composting available for residents. Weirbridge Village also will employ "best management practices" stormwater measures.

The developer has requested an exemption from the requirement that a project not have yet received building permits.

Weirbridge Village requests an additional 20 points for "extenuating circumstances surrounding the 25 year stormwater design at Weirbridge Village." Staff will research and report on the developer's request pending the setting of a public hearing for the grant request.

The current assessed value of the property is $1,171,500. The developer's estimate of completed project taxable value is $19,600,000. The current annual city tax, based on current assessed value, is $4,920. The annual estimated city tax post completion, based on the developer's estimate, is $82,320. Thus, the estimated annual Land Use Incentive Grant would be $77,400, the exact amount to be determined by the length, in years, of the grant award, and the actual assessed value of the development upon completion.

The amount of fees payable for Zoning Permit, Building Permit, Driveway Permit, Grading Permit, Plan Review Fees and Water Service Connection Fee is $207,572. The value of each 10% of the fee rebate would be $20,752. The exact amount would be determined by the percentage of fee rebate awarded as part of the Land Use Incentive Grant.

If Council decides to honor the developers request for an exemption to the building permit condition, the project as proposed appears eligible for a Land Use Incentive Grant. The next step is for Council to adopt a resolution setting a public hearing date of April 26, 2011. Per policy, Council must determine whether to award such a grant, and if so, for what time period. Based on the information submitted to date, staff finds that the project is eligible for a two-year award.

When Vice-Mayor Newman asked for public comments, none were received.

Vice-Mayor Newman said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 11-76. This motion was seconded by Councilman Russell and carried unanimously (Councilwoman Manheimer recused).

**RESOLUTION BOOK NO. 33 – PAGE 438**

## C. RESOLUTION NO. 11-77 - RESOLUTION INCREASING THE MUNICIPAL CARBON FOOTPRINT REDUCTION GOAL TO 4% EACH YEAR FOR THE NEXT FIVE YEARS

Energy Coordinator Maggie Ullman said that this is the consideration of a resolution increasing the municipal carbon footprint reduction goal to 4% each year for the next five years.

In 2007 Asheville City Council approved a carbon footprint reduction goal of 2% per year until an overall reduction of 80% was achieved. In 2008 the Office of Sustainability was formed to lead this effort. The first priority of the Office of Sustainability was to create the Sustainability Management Plan (SMP) to guide reduction efforts and prioritize opportunities. This plan was approved in 2009. The conceptual strategy for carbon reduction in the SMP is a three pronged approach: capital investment, management decision making, and creating an organization that values sustainability.

Carbon Reduction Performance to Date:

| | **Carbon Reduction** | **Programs and Initiatives** |
|---|---|---|
| FY 2007-2008 | 2.74% | Created Office of Sustainability |
| FY 2008-2009 | 2.39% | Created Sustainability Management Plan. 4/10 work schedule, automatic computer shutdown program, energy conservation competitions |
| FY 2009-2010 | 3.87% | B5 Biodiesel in fleet, recycling and sustainability education program, facilities maintenance reorganizing, fire station improvements, water pump improvements |

City Council's 2010 Strategic Operating Plan included a goal to indentify strategies and costs for doubling the municipal carbon footprint reduction goal from 2% to 4% annually. Staff evaluated, analyzed and compared opportunities in the Sustainability Management Plan, as well as identifying carbon reduction opportunities within the City's Capital Improvement Plan (CIP). Staff then created a five year Green CIP to demonstrate the City's ability to achieve 20% reduction over 5 years. The Green CIP compiles 13 separate projects such as LED streetlights, HVAC upgrades, solar thermal and alternative fuel vehicles. In addition, the Green CIP includes 4 ongoing activities including: education, building maintenance, biodiesel fuel and energy management. The Green CIP projects a 20.94% carbon footprint reduction over five years.

The financial analysis for the Green CIP demonstrates the city's ability to achieve increased carbon reduction without increasing general fund expenses. The Green CIP would be self funded through the utility dollar savings that result from implementing the projects, these dollars would revolve each year to financially support the program. Like most capital plans, specific projects included in the five-year timeframe may change; however, staff has created the plan to demonstrate the City's ability to achieve 20% reduction over five years by reinvesting utility funds saved through the implementation of energy efficiency projects. Staff would bring forward a final Green CIP and sustainability program plan as part of the FY 11-12 budget.

Staff shared this staff report with the Sustainability Advisory Committee on Energy and the Environment (SACEE) and they provided this statement:

> "SACEE enthusiastically supports Staff's proposed 5 Year, 20% Carbon Reduction Program and encourages Council to adopt this resolution through the budget process as proposed. SACEE also commends staff for developing a first-class program that will achieve the City's annual carbon reduction goal at the same time as generating substantial economic and community benefits. In adopting this program, the City will take a very

significant step towards curbing its carbon pollution, and Council and Staff are to be lauded in their leadership and managerial excellence in this effort.

This action complies with the Strategic Operating Plan by supporting Council's efforts to reduce the municipal carbon footprint reduction efforts by 4%.

Pros:

- Increased commitment to carbon reductions supports green job development and local business
- Demonstrate a strong leadership commitment to carbon reductions

Con:

- Capital funding will be required to accelerate investment in cleaner and more efficient vehicles, equipment and building systems.

Council will consider fiscal impact as part of the annual budget process.

City staff recommends City Council adopt a resolution to increase the municipal carbon footprint reduction goal to 4% each year for the next five years.

Mayor Bellamy felt it would be worth having staff pursue how the waste reduction program can fall into the sustainability category and be funded with those savings. It was her desire to see more recycling and not increase the resident rate. Ms. Ullman said that currently the policy is exclusively looking at carbon reduction for the organization, not the community. She said that she would have to analyze the financial projections.

Vice-Mayor Newman said that under the proposal, the additional savings, above paying back the debt, would go back into the energy reduction goal. If the savings were taken out of that, it would not be possible to reinvest in energy efficiency measures. He felt there are two different goals - an energy conservation goal and then solid waste management goal.

Councilman Smith wanted to make sure that there was coordination between the City Hall window replacement and the City Hall repairs. City Manager Jackson said that the primary focus of the City Hall repairs is the roof structure and securing the masonry around the building.

Vice-Mayor Newman moved to adopt the resolution to increase the municipal carbon footprint reduction goal to 4% each year for the next five years, with the amendment in the resolution to read that "Should City Council take no action at that point, the 4% carbon reduction goal would remain as the annual target." This motion was seconded by Councilman Bothwell.

Mr. Mark Cates felt that LED technology is good but the price continually goes down. He hoped that we do not move too quickly and pay more up front than we would in two years from now.

The motion made by Vice-Mayor Newman and seconded by Councilman Bothwell carried unanimously.

**RESOLUTION BOOK NO. 33 – PAGE 439**

**D. BOARDS & COMMISSIONS**

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that the Boards & Commissions Committee recommended re-advertising for another month for our vacancies on the Sustainable Advisory Committee on Energy & the Environment, the Fair

Housing Commission and the Historic Resources Commission. He urged anyone interested in serving on these boards to go to the City's website for an application.

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

**RESOLUTION NO. 11-78 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BLUELINE SYSTEMS & SERVICES LLC. TO PERFORM AN AUDIT OF THE ASHEVILLE POLICE DEPARTMENT EVIDENCE ROOM**

**ORDINANCE NO. 3961 – BUDGET AMENDMENT FOR AGREEMENT WITH BLUELINE SYSTEMS & SERVICES LLC. TO PERFORM AN AUDIT OF THE ASHEVILLE POLICE DEPARTMENT EVIDENCE ROOM**

City Manager Jackson said that staff is request Council to authorize him to enter into an agreement with Blueline Systems & Services LLC to perform an audit of the Asheville Police Department's Evidence Room, and the associated budget amendment in the amount of $175,000.

Police Chief Bill Hogan said that their goal is to get the audit started as quickly as possible. He has met with the President of Blueline to request a complete audit of the property room and to ensure the integrity of that process. He said that drug seizure monies might be available to fund this audit and as soon as they receive permission from the federal government they will reimburse the General Fund the $175,000. The audit will look at the existing pending cases and previous cases – anything that has evidentiary value, particularly drug, guns and money.

In response to Mayor Bellamy, Police Chief Hogan said that as soon as Council authorizes the resolution, the audit should begin very quickly as the auditor understands the importance.

Mayor Bellamy requested that as soon as the audit report is finalized that we provide it to the District Attorney Ron Moore the same day.

In response to Councilman Smith, Police Chief Hogan outlined the changes which will be made to ensure this doesn't happen again, noting that he will ask the auditor for any suggestions for the operation of the evidence room.

When Mayor Bellamy asked District Attorney Ron Moore if he was comfortable with the company that will perform the audit and whether he felt the audit would meet his needs, he replied yes. He then provided Council with an outline of the occurrences to date starting with him asking the Police Chief for an audit on February 22.

Councilman Russell moved for the adoption of Resolution No. 11-78. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 33 – PAGE 440**

Councilman Russell moved for the adoption of Ordinance No. 3961. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 26 – PAGE 545**

**RESOLUTION NO. 11-79 – RESOLUTION AMENDING THE CITY COUNCIL MEETING SCHEDULE TO ADD A WORKSESSION ON APRIL 26, 2011, AT 4:00 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF CITY HALL**

Councilman Russell moved to schedule a worksession on April 26, 2011, at 4:00 p.m. in the First Floor North Conference Room to discuss the recycling program proposal. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 33 – PAGE 441**

**CLAIMS**

The following claims were received by the City of Asheville during the period of March 11-31, 2011: Hugh Moran (Police), Sonia Clay (Police), AT&T (Water), Linda Brown (Fire), John Powell (Streets), Mary Lou Howell (Streets), Christy K. Clavio (Building Safety), Frank McCoy (Transit), Sarah Becker (Building Safety), Alvis Tingle (Sanitation), Julie Satterfield (Police) and Christopher German (Transit). These claims have been referred to Asheville Claims Corporation for investigation.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 8:15 p.m.

Magdalen Boulware
CITY CLERK

MAYOR

Tuesday – April 26, 2011 – 4:00 p.m.
First Floor North Conference Room

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**Recycling**

Public Works Director Cathy Ball said that the purpose of this report is to provide City Council with additional information regarding an enhanced residential recycling program.

At the April 12, 2011, City Council meeting, staff recommended an increase in the recycling fee of $0.65 per month or $7.80 per year. The current fee is $2.95 per month. Staff proposed that the additional fee would cover the following:

- Allowing, but not requiring, residents to select a larger (95 gallon) recycling container; and,
- Providing a marketing and rewards program, such as Recyclebank, for residents who participate in the recycling program.

Currently, residents can put all of their recyclables in one container. This process is known as "single stream recycling". Additionally the City is working with our vendor to add materials like yogurt containers to the accepted materials list. Neither of these two enhancements requires a fee increase.

Council requested additional information regarding the options of offering residents a 95 gallon recycling container and/or a rewards program. Staff evaluated these two options separately and determined the cost for the programs shown in the table below.

| Option | Description | Cost Increase per year | City Savings per year | Net per year | Rate Increase per month | Rate Increase per year |
|---|---|---|---|---|---|---|
| 1 | 95 gallon container | $220 K | $105 K | ($115 K) | $0.35 | $4.20 |
| 2 | 95 gallon container + Recycling rewards program | $343 K | $130 K | ($213 K) | $0.65 | $7.80 |

The recycling rewards program currently being evaluated by the City is Recyclebank. Based on Recyclebank's evaluation of Asheville, residents who participate in the recycling program could be eligible for a discount on local and national business in the amount of $90 to $130 per year.

In April 2007, Asheville City Council passed a resolution committing to reduce the municipal carbon footprint 80% by the year 2050. To lead this strategic effort, Asheville developed a Sustainability Management Plan that was adopted by City Council. Solid waste was included as a focus area in the plan, along with a series of programmatic recommendations to reduce waste generation in Asheville in its FY 2010-11 strategic plan, Council specifically identified the reduction of solid waste as a top priority.

At the April 20, 2011, SACEE recommended approval of the 95 gallon containers with the recycling rewards program or Option 2 above.

If approved, staff would need six months before full implementation could take place. During those six months, the City would procure bins and all necessary equipment, finalize changes to the existing recycling contract and implement a community education initiative.

This action aligns with Council's Green and sustainable goal: Asheville will be the southeastern leader in clean energy and environmental sustainability by expanding community education programs and implementing ways to reduce city-wide solid waste.

Pros:

- Reduction of land filled solid waste
- Increased awareness of recycled material for residents
- Supports Council's sustainability goals

Con:

- Cost per month per household will increase if either of the options is selected.

She provided some information provided by Recyclebank regarding their point redemption.

Ms. Ball, Solid Waste Manager Wendy Simmons and a representative from Recyclebank responded to various questions/comments from Council, some being, but are not limited to: in the pilot program, what are the percentages for (1) participation; (2) recycled materials; and (3) drop in waste to the landfill; could the 7% increase from the pilot program be due to the citizen awareness of the larger 95 gallons containers; do all residents on a route have to participate in the program to obtain points; how are the points determined per route; difference between coupons and point redemption; will enough people use the point reward program to make it financially beneficial for them; what percentage increase in recycling is anticipated with the Recyclebank proposal; is there an opportunity for an escape clause in the contract if certain targets are not met; can the points be donated for a cause and if so, how would that program work; does it cost businesses to participate in the reward program;

After discussion, it was the majority of Council's consensus to proceed with Option 1 and have staff bring the proposal forward for a formal vote.

**Action Items from April 12, 2011, Budget Briefing**

Director of Administrative Services Lauren Bradley said that she provided Council a memorandum to respond to action items that were identified by City Council during the April 12, 2011 budget work session.

**(1) Grove Arcade Capital Plan** – How does the City's current arrangement with the Grove Arcade contemplate capital improvements at the facility? The City of Asheville currently receives $50,000 per year, due each June 1, from the Grove Arcade Public Market foundation, as repayment for its portion of the 1998 COPS loan. The city can expect to receive this payment as outlined by June 1 of this year. Regarding capital improvements, the city of Asheville is not contractually obligated to participate in any necessary capital improvements to the Grove Arcade. Currently, Historic Grove Arcade (HGA) LLC. (Progress Energy) is responsible for 66% of the total costs for capital improvements in the building and Grove Arcade Public Market Foundation (GAR) is responsible for 34% as its cost share. In addition, GAR has $300,000 budgeted in this current budget year for on-going operational maintenance items in the building, and currently has $100,000 in capital reserves.

**(2) Transit Deviations** – Provide an update on the transit route deviations that have been addressed as part of the Transit Master Plan.

Planning to add
Zillicoa St

Removed September 20, 2010
Farmers Market, Woodridge Apartments, Dial-a-ride Discount Shoes, Dial-a-ride Ridge & Grail

Planning to Keep
Medical Park, Goodwill, Golden Living Center, Grove Park Inn , Airport, Klondyke Apartments, VA Hospital , Warren Wilson College, UNCA

Planning to Remove
Canterbury Apartments, Dial-a-ride Care Partners, Overlook Shopping Center, Hospital, Innsbruck Mall, Overlook Shopping Center , Dial - a - ride Reuters Center, Dial-a-ride Midland, Dial-a-ride Kimberly, Eliada Home, Ledgewood Apt, Spruce Hill Apts.., Meadow Apts., Overlook Apartments, Deaverview Apartments, Laurel Wood Apartments, Biltmore Square Mall, Sulpher Springs Rd., Caledonia Rd., Rock Hill Rd. east, Courtland Rd, Sante & Watauga, Liberty & Raleigh Rd.& Oakley, Baker Dr. & Rash Dr. & Oakmont Terrace, Hazel Mill Rd, Mt Clare & Hillside, Dial-a-ride NC Voc Rehab, Peachtree Rd., Erskine Apartments, River Ridge Shopping Center, West Gate, Regent Park, Target (route deviation), Pine Grove St.

Planning to Shorten Deviation
Hillcrest Apartments, AB Tech, Pisgah View Apartments

Mayor Bellamy said that she would contact Director of Transportation Ken Putnam for some questions regarding the deviations.

**(3) Golf Course Irrigation System** – How much would the golf course save annually by having the irrigation system installed on the back nine? What was the total estimated capital cost for the project? A memorandum from Parks, Recreation and Cultural Arts Director Roderick Simmons was provided.

Mr. Simmons responded to questions from Council regarding the Golf Course irrigation system.

**(4) Operational Savings** – Highlight other operational savings the City has realized as a result of past capital projects. Staff will provide this information in a follow-up memorandum.

**(5) Montford Avenue Street Rebuild** – Provide a map of the proposed Montford Avenue street rebuild project. Maps were attached.

**(6) Greenway Construction Program** – Provide maps of the proposed Beaucatcher/Overlook Greenway and the Town Branch Greenway. Provide a projected timeframe for the construction of both greenways. Maps were attached.

**Pack Place Board**

After a short discussion initiated by Councilman Russell regarding whether an elected official should be a voting member on the Pack Place Board, City Attorney Oast said that he would address the issue at the Boards & Commissions Committee meeting on May 10.

At 4:50 p.m., Mayor Bellamy adjourned the worksession.

Tuesday – April 26, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

The For Girls Only Club led City Council in the Pledge of Allegiance.

**INVOCATION**

Vice-Mayor Newman gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING MAY AS "MOTORCYCLE AWARENESS MONTH"**

Mayor Bellamy read the proclamation proclaiming May, 2011, as "Motorcycle Awareness Month" in the City of Asheville. She presented the proclamation to Mr. Steve Ensley who briefed City Council on some activities taking place during the month.

**B. PROCLAMATION PROCLAIMING MAY AS "FOSTER CARE MONTH MONTH"**

Mayor Bellamy read the proclamation proclaiming May, 2011, as "Foster Care Month" in the City of Asheville. She presented the proclamation to Ms. Heather Reardon, Foster Care Supervisor, who briefed City Council on some activities taking place during the month.

**C. PROCLAMATION PROCLAIMING MAY 1-7, 2011, AS "ARSON AWARENESS WEEK"**

Mayor Bellamy read the proclamation proclaiming May 1-7, 2011, as "Arson Awareness Week" in the City of Asheville. She presented the proclamation to Fire Chief Scott Burnette, who introduced other fire and law enforcement personnel who represent the Asheville-Buncombe Arson Task Force. Chief Burnette also briefed City Council on some activities taking place during the week.

**D. PROCLAMATION PROCLAIMING MAY 1-7, 2011, AS "DRINKING WATER WEEK"**

Mayor Bellamy read the proclamation proclaiming May 1-7, 2011, as "Drinking Water Week" in the City of Asheville. She presented the proclamation to Water Resource Department employees Leslie Carreiro, Florie Presnell, Brandon Buckner, Chad Pierce, Ivan Thomas, Audran Stevens and Steve Shoaf. Water Resources Director Shoaf briefed Council on some activities taking place during the week.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 12, 2011

B. MOTION SETTING A PUBLIC HEARING ON MAY 10, 2011, TO ADOPT THE FISCAL YEAR 2011-12 ANNUAL OPERATING BUDGET

C. ORDINANCE NO. 3962 - ORDINANCE TO REDUCE THE SPEED LIMIT ON RUMBOUGH PLACE AND SALOLA STREET IN WEST ASHEVILLE FROM 35 MPH TO 25 MPH

Summary: The consideration of an ordinance to reduce the speed limit on Rumbough Place and Salola Street in West Asheville from 35 mph to 25 mph.

According to state law (NCGS # 20-141), the statutory speed limit in North Carolina is 35 mph inside municipal corporate limits for all vehicles and 55 mph outside municipal corporate limits for all vehicles except for school buses and school activity buses.

Furthermore, local authorities may authorize by ordinance higher speeds or lower speeds than the statutory 35 mph speed limit on locally-maintained streets provided that the higher speed limit cannot exceed 55 mph. Speed limits authorized by local authorities are effective when the appropriate signs are erected.

City staff recently completed an engineering and traffic investigation and determined that a 25 mph speed limit would be reasonable and safe on Rumbough Place from US 19-23 (Patton Avenue) to Salola Street and on Salola Street from Rumbough Place to Sand Hill Road. The subject streets primarily serve residential properties in a well established neighborhood. Daily traffic volumes are less than 1,000 vehicles per day and the 85$^{th}$ percentile speed ranges from 28.7 mph to 32.9 mph.

This action complies with the City Council Strategic Operating Plan in the Safety focus area by improving the "street experience" for all users including pedestrians, bicycles, and motorists in a primarily residential corridor.

Pros:

- City staff has been able to respond favorably to a citizen's request.
- Based on the 85$^{th}$ percentile speed, most drivers would adhere to a 25 mph posted speed limit.

Cons:

- The initial cost to install the appropriate speed limit signs is about $600.
- Typically, speed limit signs have a serviceable life of five to seven years.

The initial cost to install the appropriate speed limit signs is about $600 and is included in the current operating budget for the Transportation Department.

City staff recommends that City Council approve an ordinance enacting and/or changing a 25 mph speed limit on Rumbough Place from US 19-23 (Patton Avenue) to Salola Street and on Salola Street from Rumbough Place to Sand Hill Road in West Asheville.

ORDINANCE BOOK NO. 27 – PAGE 1

D. RESOLUTION NO. 11-81 - RESOLUTION ACCEPTING TRELLIS AS A CITY-MAINTAINED STREET

Summary: The consideration of a resolution to accept Trellis Court as a city-maintained street.

Code of Ordinances sec. 7-15-1(f)(4)a requires that streets dedicated for public use be accepted by resolution of the City Council. The developer submitted a written request on January 27, 2011, asking the City to accept the subject street as a city-maintained street.

Trellis Court from Brotherton Avenue to its dead-end is a developer-constructed street that has an average width of 18 feet with 24-inch curb and gutter, a length of 0.09 mile, and a right-of-way width of 50 feet.

Transportation Department staff and Public Works Department staff inspected the subject street and determined that it was constructed according to current standards as indicated in the City of Asheville's Standard Specifications and Details Manual. In addition, the developer's engineer has furnished a signed and sealed letter verifying that the subject street was constructed to current City of Asheville standards.

Following City Council's approval of this resolution, the subject streets will be added to the official Powell Bill List.

This action complies with the City Council 2010-11 Strategic Operating Plan within the Sustainable Focus Area by accepting street infra-structure to help support the healthy growth of the City.

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help maintain the street.
- The street provides access and connectivity in a residential community.

Con:

- Powell Bill Funds will not cover 100% of the total cost to maintain the street.

There will be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the street.

Staff recommends that City Council accept Trellis Court as a city-maintained street.

**RESOLUTION BOOK NO. 33 – PAGE 443**

**E. RESOLUTION NO. 11-82 - RESOLUTION THE CITY MANAGER TO SIGN A CHANGE ORDER FOR PHYSICIAN SERVICES PROVIDED THROUGH THE CITY'S HEALTH SERVICES DIVISION**

Summary: The consideration of a change order for physician services provided through the City's Health Services Division.

In January 1995, Council authorized the City Manager to enter into an agreement for part-time physician services in the Health Services Division. Dr. Paul Martin entered into a contractual agreement with the City of Asheville to provide three clinic days to City employees and their families. These clinic days have been very successful for Health Services.

Due to the ongoing need to Dr. Martin's services to employees, change order action is needed to continue his assistance to employees in the Health Services facility.

This action complies with the Fiscal Responsibility prong of the City of Asheville's Strategic Operating Plan for 2010-11. By offering city employees clinic hours and complimentary health services for non-critical issues, Heath Care funds are saved in unnecessary doctor and emergency room visits, maintaining the city's long term financial commitment to high levels of fiscal responsibility.

Pros:

- The Health Services Clinic and Health Services Satellite Clinic provides on-site care for non-critical health needs
- Onsite care and services for employees saves the City of Asheville money in expenses that are not paid in unnecessary doctor and emergency room visits
- Dr. Martin is a trusted member of the Health Services staff team

Con:

- There are no foreseen cons for these services

This change order would be a one-time increase of $20,000 to the existing $100,000 contract. Funds have been budgeted and will be encumbered from the Health Care Fund to cover the cost of the change order to the contract amount.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a change order for physician services with Dr. Paul Martin, MD to continue to provide physician services to employees and their families.

**RESOLUTION BOOK NO. 33 – PAGE 445**

**F. RESOLUTION NO. 11-83 - RESOLUTION AMENDING THE 2005 LEASE WITH DEWINE SEEDS – SILVER DOLLAR BASEBALL, LLC, REGARDING THE USE OF MCCORMICK FIELD FOR THE OPERATION OF THE ASHEVILLE TOURISTS**

Summary: The consideration of a resolution authorizing the City Manager to amend the 2005 lease with DeWine Seeds to adjust the 2011 lease payments owed to the City by DeWine Seeds, contingent upon successful negotiations of a new lease for the use of McCormick Field for the operation of the Asheville Tourists.

DeWine Seeds –Silver Dollar Baseball, L.L.C. (herein "DeWine Seeds") wishes to re-negotiate the terms of the lease for the use of McCormick Field for the continued operation of the Asheville Tourists, to adjust 2011 lease payments, contingent upon a successful lease negotiation.

On July 1, 2005, the City entered into a 10-year lease with Asheville Tourist Baseball Club, Inc. for the use of McCormick Field to operate a minor league baseball program within the city limits of Asheville; and on October 25, 2005, City Council approved the assignment of lease for use from Asheville Tourist Baseball Club, Inc. to Palace Baseball, LLC.

On January 26, 2010 City Council approved the assignment of lease for use from Palace Baseball, L.L.C. to DeWine Seeds for the continued operation of minor league baseball in Asheville.

DeWine Seeds has been operating the under the original 2005 lease agreement and now wishes to re-negotiate the terms of the original 2005 agreement.

The current lease agreement calls for annual lease payments to be paid in three equal payments of $33,333.33 on June 1st, August 1st, and September 1st for years 2010-2012 for a yearly total amount of $100,000.00.

In order to plan for the take over of operational functions that could potentially be part of the new lease agreement, DeWine Seeds is requesting an amendment to the 2005 lease as follows: 1) adjust the June 1 and August 1 payments owed to the City by DeWine Seeds to $32,517.00 for each monthly payment; and 2) forgo the September 1 payment in the amount of $34,966.00, contingent upon successful re-negotiating a new lease by December 1, 2011. If terms for a new lease cannot be finalized by December 1, 2011, DeWine Seeds will be required to pay the City the September 1st payment in the amount of $34,966.00 and the terms and conditions of the 2005 lease will continue to be in effect until the expiration of the term of the 2005 lease.

This action meets Council's Strategic Operating Plan in the area of Fiscal Responsibility. By working with the DeWine Seeds –Silver Dollar Baseball, L.L.C. to re-negotiate the terms of the 2005 lease for the use of McCormick Field we are achieve the Fiscal Responsibility Goal of Operate the City of Asheville to the highest levels of fiscal responsibility by Identifying resources for strategic initiatives.

Pros

- DeWine Seeds is committed to keeping minor league baseball in Asheville.
- With the change in the economic climate, this gives the Asheville Tourists and the City an opportunity to make possible changes to a 10-year old lease developed by the previous owner of the Asheville Tourists.

Con

- None

If staff and DeWine Seeds are successful in re-negotiating the lease, the changes could potentially impact the FY 2011-12 McCormick Field revenue and expense budget. If terms for a new lease can not be finalize by December 1, 2011, DeWine Seeds will pay the City the September 1st payment in the amount of $34,966.00 and there will be no impact on the FY 2011-12 budget.

Staff recommends City Council adopt a resolution authorizing the City Manager to amend the 2005 lease with DeWine Seeds to adjust the 2011 lease payments owed to the City by DeWine Seeds, contingent upon successful negotiations of a new lease for the use of McCormick Field for the operation of the Asheville Tourists.

**RESOLUTION BOOK NO. 33 – PAGE 446**

**G. RESOLUTION NO. 11-84 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BOLTON CONSTRUCTION AND SERVICE OF WNC, INC. FOR THE PURPOSE OF RETROFITTING THE CIVIC CENTER BANQUET HALL HVAC SYSTEM**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Bolton Construction and Service of WNC, Inc. not to exceed $112,000 for the purpose of retrofitting the Civic Center Banquet Hall HVAC system.

City Council previously approved using grant funds approved through the Energy Efficiency and Conversation Block Grant (EECBG) for the retrofitting of the Civic Center Banquet Hall HVAC. The purpose of the grant is to reduce energy consumption, increase energy efficiency and reduce carbon footprint.

This contract was bid out on March 10, 2011. Bids were received on April 5, 2011, and Bolton Construction and Service of WNC, Inc., Asheville, N.C., was selected as the most responsive responsible bidder.

This action complies with City Council's Strategic Operating Plan goal to become the southeastern leader in clean energy and environmental sustainability as well as the objective to look for grant opportunities to enhance investment in infrastructure maintenance.

Pros:

- This retrofit will establish a separate heating and cooling zone for the banquet hall so that the large system for the rest of the facility does not need to run when using the banquet hall.
- This improvement will support the upgrade of the banquet hall space to provide an improved meeting facility for the public.

Con:

- None noted.

The project will use $66,000 previously accepted EECBG grant funds and $46,000 previously budgeted capital dollars from the Civic Center Fund.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Bolton Construction and Service of WNC, Inc. not to exceed $112,000.

**RESOLUTION BOOK NO. 33 – PAGE 447**

**H. RESOLUTION NO. 11-85 - RESOLUTION AMENDING THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL'S 2010-11 OUTSIDE AGENCY AGREEMENT**

Summary: Asheville Buncombe Community Relations Council (ABCRC) requests the amendment of their 2010-2011Outside Agency agreement to allow for the use of $18,000 to pay for prior year tax obligations, interest charges and other prior bills.

ABCRC has requested that the City and County each agree to allocate $18,000 from their existing general fund agreements to enable the organization to pay the owed interest and enable negotiations with the IRS to commence. A copy of the letter from ABCRC associated with this request was provided to Council. The Buncombe County Commissioners have approved payment of these funds. The request to use 2010-11 Outside Agency funds allocated to ABCRC for this purpose has also been recommended for approval by the City Council Housing and Community Development Committee, pending staff review of the legality of this action.

Pros:

- Approval of this request enables the organization to begin the process of seeking to negotiate settlement of repayment of past taxes;
- Fair housing compliance and enforcement activity will continue to be provided by the organization.

Cons:

- Use of these funds for this purpose will mean that these funds are not available to pay for other expenses of the organization during the remainder of this fiscal year;
- The outcome of the investigations and negotiations is not known; therefore, the organization cannot predict how these conditions will affect its future viability.

City Council approved $50,000 in Outside Agency funding for ABCRC as a part of the FY 2010-11 budget. A portion of that existing funding will be used by ABCRC to pay for the prior year tax obligations, interest charges and other prior bills. No new funds are being requested.

As recommended by the HCD Committee, the staff recommends approval of the resolution authorizing the amendment of the Outside Agency grant for the requested purpose.

**RESOLUTION BOOK NO. 33 – PAGE 448**

**I. ORDINANCE NO. 3963 - BUDGET AMENDMENT TO INCREASE THE CIVIC CENTER FUND TO REFLECT UPDATED FISCAL YEAR 2010-11 REVENUE AND EXPENDITURE PROJECTIONS**

Summary: The consideration of a budget amendment, in the amount of $170,000, from the Civic Center operating revenue, to increase the Civic Center Fund budget to reflect updated Fiscal Year 2010-11 revenue and expenditure projections.

The Civic Center has exceeded budgeted revenues due to several sold-out events in the 2010-11 Fiscal Year. Expenditures are also proportionately expected to exceed budget by the end of the Fiscal Year. As a result, staff has calculated an updated estimate of the expected revenues and expenses in the Civic Center Fund. In order to fund anticipated expenses over the last quarter of the current fiscal year, staff is recommending that the Civic Center Fund budget be increased by $170,000. The additional revenue generated by concessions will cover the cost of the budget amendment; therefore, no transfer from the General Fund is required.

This amendment has been presented to the Civic Center Commission and recommended to City Council.

This action supports the City Council Strategic Plan by supporting the Civic Center as a regional entertainment destination and improving the Civic Center customer experience.

Pro:

- Provides sufficient budget authorization for anticipated revenues and expenditures in the Civic Center Fund without increasing the General Fund transfer.

Con:

- None.

As noted above, this budget amendment is funded with Civic Center operating revenue that has exceeded original budget estimates. Therefore, there is no impact to the City's General Fund budget.

Civic Center staff and Commission recommend City Council approve a budget amendment to increase the Civic Center Fund budget by $170,000 to reflect updated Fiscal Year 2010-11 revenue and expenditure projections.

**ORDINANCE BOOK NO. 27 – PAGE 2**

**J. ORDINANCE NO. 3964 - BUDGET AMENDMENT TO COVER THE COSTS FOR MILLING AND RESURFACING SOUTH LEXINGTON AVENUE**

Summary: The consideration of a budget amendment, in the amount of $35,000 from existing Sullivan Act proceeds, to cover the costs for milling and resurfacing South Lexington Avenue in conjunction with a water improvement project.

The City of Asheville Water Department has completed construction on a waterline replacement project on South Lexington Avenue. This project was not initially budgeted for resurfacing by Public Works; however, it is advantageous to complete the infrastructure repairs in the current fiscal year.

In the FY 2010-11 Budget Ordinance, Council approved a project budget of $1,710,000 for Azalea Road Improvements with funding coming from Sullivan Act proceeds. In September of this fiscal year, Council approved moving $225,000 from the Azalea Road project to fund the Northwood Road street improvement project, which left a budget of $1,485,000 for Azalea Road. During this fiscal year, the City will be paying for the design of the Azalea Road project out of this money but the construction is not anticipated to occur until FY 2011-12.

This request is to move $35,000 (the cost of milling and paving South Lexington Ave.) in this fiscal year from the Azalea Road project to pay for these costs, and then restore the $35,000 in funding to Azalea Road in next year's budget. This change will not impact the schedule for the Azalea Road project

This action complies with the City Council Strategic Operating Plan in fully leveraging funding from the State and other sources for regional transportation improvements.

Pros:

- Will allow Public Works to make improvements to South Lexington Ave. following the waterline replacement, consistent with Sullivan Act(s).
- Provides long term investment in the City's infrastructure.

Con:

- None noted.

This budget amendment is a request to move $35,000 from one project to another in this fiscal year. It has no other fiscal impact.

City staff recommends City Council adopt the budget amendment for South Lexington Ave. improvements in the amount of $35,000 from the five percent Water Department Sullivan Act Funds.

**ORDINANCE BOOK NO. 27 – PAGE 4**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Smith moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

**III. PRESENTATIONS & REPORTS: None.**

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER A LAND USE INCENTIVE GRANT FOR WEIRBRIDGE VILLAGE**

**RESOLUTION NO. 11-86 - RESOLUTION ADOPTING THE TERMS FOR A LAND USE INCENTIVE GRANT AGREEMENT FOR WEIRBRIDGE VILLAGE APARTMENTS**

Councilman Russell moved to recuse Councilwoman Manheimer from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Bothwell and carried unanimously.

Mayor Bellamy opened the public hearing at 5:28 p.m.

Community Development Director Jeff Staudinger said that this is the consideration of a resolution approving a land use incentive (LUI) grant for Weirbridge Village. This public hearing was advertised on April 15, 2011.

Mr. Staudinger said that the Weirbridge Village project entails the development of 280 units of rental housing located at the intersection of Hendersonville Road and Racquet Club Road in the City of Asheville. No commercial or other mixed use development is cited in the proposal.

The project, as presented to staff, appears to meet the Eligibility Requirements,

- Equity: A 20% equity contribution is required. The project developers indicate they have contributed 20.67% equity to the project. This includes unreimbursed expenses from the original PUD process.
- Energy Star Certification: The developers indicate the project will achieve Energy Star certification.
- Inside city limits, within ¼ mile of designated major highways: The project is located in an eligible location.
- Legal Costs; the developer must agree to assume all legal costs if the LUI is challenged: The developer has agreed to assume all legal costs if the Land Use Incentive policy is challenged.

The project proposes the following Public Benefit Elements:

- Workforce Housing units with assured affordability at that rent level for a minimum of ten years: *50% of total units* (10 points)
- Green Building/Energy: *Energy Star certified* (5 points)
- Located within the Sustainability Bonus Area: *Yes* (5 points)

The project therefore scores 20 points. Based on this score, the project would be eligible for a two year Land Use Incentive Grant.

The project meets the following 2010-11 Strategic Plan Goals: (1) *Affordable*: Create and preserve affordable rental and homeownership opportunities in Asheville. The project is directly related to the opportunity for public/private partnerships and innovative financing to incentivize affordable housing development; and (2) *Green and Sustainable*: Set and develop a plan for implementing a community reduction goal. The project is being built to Energy Star standards, and will be certified by Energy Star.

The project meets applicable Master Plans in the following ways: (1) The project supports the goals of the *2009 City Transit Master Plan* by its location "along major transit corridors..." ; and (2) The project supports the goals of the *2009 Sustainability Management Plan*, which calls for the City to encourage Transit Oriented Development. According to sources cited by the developer, "the minimum density at which rapid transit can operate efficiently is approximately 12 units per acre. The Weirbridge Village development is 17 units per acre." The development is recycling during construction, and post construction will offer both recycling and composting available for residents. Weirbridge Village also will employ "best management practices" stormwater measures.

The developer has requested an exemption from the requirement that a project not have yet received building permits.

Weirbridge Village requests an additional 20 points for "extenuating circumstances surrounding the 25 year stormwater design at Weirbridge Village." Staff has no recommendation as this is a policy decision.

The current assessed value of the property is $1,171,500. The developer's estimate of completed project taxable value is $19,600,000. The current annual city tax, based on current assessed value, is $4,920. The annual estimated city tax post completion, based on the developer's estimate, is $82,320. Thus, the estimated annual Land Use Incentive Grant would be $77,400, the exact amount to be determined by the length, in years, of the grant award, and the actual assessed value of the development upon completion.

The amount of fees payable for Zoning Permit, Building Permit, Driveway Permit, Grading Permit, Plan Review Fees and Water Service Connection Fee is $207,572. The value of each 10% of the fee rebate would be $20,752. The exact amount would be determined by the percentage of fee rebate awarded as part of the Land Use Incentive Grant.

If Council decides to honor the developers request for an exemption to the building permit condition, the project as proposed appears eligible for a Land Use Incentive Grant. Per policy, Council must determine whether to award such a grant, and if so, for what time period. Based on the information submitted to date, staff finds that the project is eligible for a two-year award.

Mr. Richard Dirks said that the developer is proposing to designate 50% of their units as workforce housing but in their presentations to the neighbors they emphasized this would be market-rate housing, except for 5%. He was also concerned about the order in which this process came about.

Mayor Bellamy closed the public hearing at 5:31 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Newman moved to approve a land use incentive grant for Weirbridge Village for a two-year grant, not including the 25-year stormwater design request for additional points. This motion was seconded by Councilman Smith.

Vice-Mayor Newman said that the goal of the Land Use Incentive Grant is to encourage infill developments that meet City's goals and typically all those important decisions are made before the permit applications start. However, in this case the developer has made some changes to the project and will meet some specific criteria outlined in the policy. He was hesitant to grant the exemption due to the fact that the timing is occurring after the permits have been applied for, but he didn't think there will be many other projects that fall into this category. Also, staff will be monitoring the project to ensure that the developer meets the criteria.

Councilman Bothwell was pleased to see the attempted compliance with our policy rules for these type of grants. However, to be consistent with his philosophy, he will vote against the motion, not because of this project, but he didn't believe shifting the tax burden to existing taxpayers to help developers develop.

Mayor Bellamy explained how the developer has saved the City money for putting in the 25-year stormwater design and urged Council to consider supporting their request for additional points.

Vice-Mayor Newman could not support amending his motion in that it was his opinion that when the developer was before Council to rezone the RS-4 property, it was his understanding that the higher 25-year stormwater design was part of the consideration for the higher intensity of development.

The motion made by Vice-Mayor Newman and seconded by Councilman Smith carried on a 5-1 vote, with Councilman Bothwell voting "no" (Councilwoman Manheimer recused).

**RESOLUTION BOOK NO. 33– PAGE 449**

**B. PUBLIC HEARING TO CONSIDER ADOPTION OF THE CONSOLIDATED ACTION PLAN FOR FISCAL YEAR 2011 WHICH SETS OUT THE PROPOSED USE OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP ACT FUNDS**

**RESOLUTION NO. 11-87 - RESOLUTION ADOPTING THE CONSOLIDATED ACTION PLAN FOR FISCAL YEAR 2011 WHICH SETS OUT THE PROPOSED USE OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP ACT FUNDS**

Mayor Bellamy opened the public hearing at 5:42 p.m.

Community Development Director Jeff Staudinger said that this is a public hearing will be conducted on April 26, 2011 to receive comments regarding the proposed Consolidated Action Plan for Fiscal Year (FY) 2011-2012, which sets out the proposed use of federal Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) funds for the coming fiscal year. This will be followed immediately by Council's consideration of a resolution authorizing submission of this Consolidated Action Plan to the US Department of Housing and Urban Development.

As of Monday, April 25, the City will have available an estimated $1,216,671 in CDBG funds (18% reduction in CDBG Entitlement funding from last year). Last year, $1,603,597 was available, for a reduction in funding of $386,926. In HOME funds, $1,425,526 funds are available in the fiscal year beginning July 1, 2011. This is a 12% reduction in HOME Entitlement funding. The funding total is similar to last year.

The City's Housing and Community Development Committee has made recommendations for the use of CDBG funds, which must be used in housing or community development programs in Asheville, and the Asheville Regional Housing Consortium has recommended uses for the HOME funds, which must be used for housing programs within the four-county Consortium area (Buncombe, Henderson, Madison, and Transylvania counties). He reviewed the total of 33 programs recommended for funding – 17 CDBG and 16 for HOME. Allocations are consistent with the proposed Strategic Housing & Community Plan for 2010-2015.

HOME funds and CDBG funds will assist in creating or improving 182 housing units and helping an additional 179 households afford housing Consortium-wide. CDBG funds will also benefit more than 5,350 low-income City residents through homeless services, housing counseling, small business assistance, and other needed services. Our partner agencies will contribute almost $24,000,000 of other funding to these programs, leveraging $8.25 for every $1 of HOME and CDBG funds.

Comments received at this public hearing will be incorporated into the Plan, as will comments submitted in writing. The plan is due to be submitted to HUD by May 15.

This Annual Action Plan directly supports Council's Strategic Goals of: (1) Affordable: This plan directly supports the City's affordable housing plan, uses innovative public-private partnerships to incentivize affordable housing development, and supports initiatives to end chronic homelessness emphasizing the Housing First model; (2) Green and Sustainable: works with regional partners creating green buildings and energy conservation; (3) Safe: Supports employment alternatives for youth at risk of gang exposure; and (4) Job Growth and Community

Development: Supports diversified job growth and small business development; promotes sustainable high-density infill growth; and attracts and retains quality employees.

Pros:

- Approval of the Action Plan paves the way for the receipts of over $2,900,000 of HUD funding to the City, which will be used to create affordable housing, create jobs, and improve public infrastructure.
- HUD funding will leverage $23,000,000 of additional funding for these projects.
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee and the Asheville Regional Housing Consortium.

Con:

- It is not possible to fund all the applications received, and most of those funded will receive less than the amount requested.

The Action Plan is fully funded from federal CDBG & HOME entitlement grants, unused funds from previous completed projects, and estimated program income. Staff costs to administer the program are also fully paid from federal sources. The funded programs will provide new construction and other economic activity in the City and region, creating and sustaining employment. New assisted housing units to be constructed in Asheville will add significantly to the City's tax base. Staff will bring the FY 2011-12 CDBG and HOME budgets to City Council for adoption in June along with the rest of the City's FY 2011-12 Operating Budget. Staff notes that the reduction in funding has resulted in the loss of one staff position, with no change in contract, technical assistance and compliance requirements.

Staff recommends approval of the resolution authorizing submission of the City's Consolidated Annual Action Plan for 2011-12 to the U. S. Dept. of Housing and Urban Development.

Mayor Bellamy closed the public hearing at 5:47 p.m.

In response to Mayor Bellamy, Mr. Staudinger said that every allocation has been reduced from prior years. He then explained the required contingency amount.

Vice-Mayor Newman was pleased to highlight that the HOME Consortium's number one project was to support funding for Mountain Housing Opportunities' Eagle Market Place project, which will benefit downtown neighborhoods.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 11-87. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 33– PAGE 450**

**C. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF THE SWEET BISCUIT INN LOCATED AT 77 KENILWORTH ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND A REQUEST FOR MODIFICATIONS TO LANDSCAPING REQUIREMENTS**

**ORDINANCE NO. 3965 - ORDINANCE TO CONDITIONALLY ZONE THE SWEET BISCUIT INN LOCATED AT 77 KENILWORTH ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT**

Mayor Bellamy opened the public hearing at 5:55 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone the Sweet Biscuit Inn located at 77 Kenilworth Road from RS-8 Residential Single-Family High Density District to RM-8 Residential Multi-Family Medium Density District to increase the number of guest rooms from 5 to 8 and a request for modifications to landscaping requirements. This public hearing was advertised on April 15 and 22, 2011.

Ms. Bernstein said that the applicant is requesting a Conditional Zoning for one parcel in the Kenilworth neighborhood from RS-8 (Residential Single-Family Medium Density District) to RM-8 (Residential Multi-Family Medium Density District) in accordance with Section 7-7-8 of the UDO.

The project site consists of a single parcel located at 77 Kenilworth Road with an area of approximately 0.63 acres. The lot and adjacent parcels are currently zoned RS-8, in a predominantly single-family neighborhood.

The site contains an existing three-story residential structure (approximately 6,800 square feet) and one detached accessory structure (495 square foot carriage house). The structure was built circa 1924 as a single family house and was converted into a boarding house at some point (1970s). The current owners purchased the property in 1999 and converted it into a five-room bed and breakfast (five rooms being the maximum allowed under the current zoning designation).

The applicant is proposing to maintain the use as a bed and breakfast inn but the up-zoning would allow the use of all eight (8) existing guestrooms (seven rooms in the main house and one in the carriage house). This use is a "Use by Right, Subject to Special Requirements" in the RM-8 zoning district.

The proposal includes upgrades to the existing parking area to accommodate the number of parking spaces as required by the UDO (9 spaces, 1 Handicapped parking space). Access to the site will remain in the current location from Kenilworth Road.

Landscaping compliance is required on this site due to the rezoning and includes a Type A (20') property line buffer along the north, east and south boundaries adjacent to RS-8, street trees and parking lot landscaping. There is significant mature vegetation on the site that will be used as credits for much of the required landscaping around the perimeters and within the site. Aside from the expansion of the vehicular use are and the landscaping installation, no other physical improvements are proposed on the site. It should largely retain its existing visual character.

*Modifications*

- *Property line buffer reduction* – The site is already developed and one of the existing conditions of the residential appearance of the lot is that the driveway access to the rear parking is along the side property line, where a Type A property line buffer would be required. The applicant is requesting elimination of the property line buffer planting requirements along the southern boundary (but will plant several trees where there is room towards the southeastern corner of the site).
- *Driveway, parking space & structure encroachment into required buffer area* – Structures, parking spaces and driveways are prohibited in required property line buffers. Both the existing driveway and guest house encroach into the required buffer location along the southern property boundary as well as a small portion of the proposed ADA-accessible parking space.

This proposal was recommended for approval with conditions by the Technical Review Committee on March 7, 2011. Letters and a petition of support have been received from neighbors. At their meeting on April 6, 2011, the Planning & Zoning Commission recommended approval by a unanimous 6-0 vote.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The site has existed in its presently developed state for many years and the minor physical changes to delineate parking are proposed to preserve mature trees and accommodate the existing site layout. There are no significant natural or topographic features on the site or in the immediate vicinity.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The proposal is not expected to injure the value of adjoining or abutting properties. Since the physical changes to the site are minimal and because the site has been operating as a bed and breakfast for years, the impact to abutting properties should be negligible.

   Although the requested modification to greatly reduce the property line buffer on the southern boundary will result in less than the ideal / required vegetated screen, the driveway and parking in this location is an existing circumstance and not a result of this proposal. Additionally, none of the parking spaces are immediately adjacent to the property line, none face the neighboring property, most spaces are screened by the carriage house and the layout of the parking area is such that headlights of parked or idling vehicles will not be directed at the adjacent property.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   This residential structure was built in the 1920s and is similar to the other houses in the immediate neighborhood. The gravel parking area and carriage house in the rear yard is similar to other larger single-family lot configurations in the area containing garages and accessory apartments. The bed and breakfast use has been operating for many years and has done so with little intrusion. Only very minimal physical changes are proposed on the site and it should remain in harmony with the scale, bulk, coverage, density and character of the area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

The *Asheville City Development Plan 2025* encourages mixed but compatible uses in residential areas, stating that adaptive reuse preserves architectural diversity and contributes to a healthy neighborhood (p.69), using bed and breakfasts as a specific example. A goal identified through the *Plan* relates to recognizing and developing the historic component of Asheville's tourist economy (p.95) and creating different accommodation opportunities for visitors to the area (p.195).

This proposal relates to City Council's goals on *job growth & community development* by supporting the local economy – in which tourism plays a major role.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The project site is located on Kenilworth Road (transit Rte. 4) in an established residential neighborhood where adequate infrastructure exists. In addition, preliminary review by other service providers has not revealed any problems for continued service to the site.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   No traffic congestion or traffic hazard is anticipated. The use is existing and adequate off-street parking is provided on the site.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The conditional zoning allows an established bed and breakfast to utilize all existing guestrooms within the structure – supporting tourism opportunities.
- The addition of a handicapped parking space improves accessibility to the use.

Con:

- Due to existing site constraints, the required property line vegetation cannot be installed – reducing the visual buffer between the southern neighbor and the driveway and parking area.

Ms. Angela Maddix, owner of Sweet Biscuit Inn, said that the neighborhood has embraced their business and they enjoy being a part of Asheville's tourist and business community. She asked for Council's support of her conditional zoning request.

Mayor Bellamy closed the public hearing at 5:59 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3965, to conditionally zone property the Sweet Biscuit Inn located at 77 Kenilworth Road from RS-8 Residential Single-Family High Density District to RM-8 Residential Multi-Family Medium Density District to increase the number of guest rooms from 5 to 8 with approval to the modifications to landscaping requirements, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in

reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Smith and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 6**

**D. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF THE ASHEVILLE SURGERY CENTER LOCATED AT 5 MEDICAL PARK DRIVE FROM COMMERCIAL INDUSTRIAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING**

**ORDINANCE NO. 3966 - ORDINANCE TO CONDITIONALLY ZONE THE ASHEVILLE SURGERY CENTER LOCATED AT 5 MEDICAL PARK DRIVE FROM COMMERCIAL INDUSTRIAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT/CONDITIONAL ZONING**

Mayor Bellamy opened the public hearing at 6:01 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance to conditionally zone the Asheville Surgery Center located at 5 Medical Park Drive from Commercial Industrial District to Commercial Industrial District/Conditional Zoning for the construction of an 8,203 square foot addition to the existing building and a 27 space expansion of the parking area. This public hearing was advertised on April 15 and 22, 2011.

Ms. Tuch said that the applicant, Asheville Surgery Center, LLC, currently located at 5 Medical Park Drive in the Regional Medical Park located off of Sweeten Creek Road, is seeking conditional zoning approval to allow for an expansion. The property is currently zoned CI (Commercial Industrial). The applicant is seeking rezoning to CI/CZ (Commercial Industrial Conditional Zoning). The proposed expansion to the 30,632 square foot facility is for an additional 8,203 square feet to accommodate a Pediatric Acute Care Unit (at the front of the existing facility) and to provide for an uninterruptable power supply (UPS) to be housed at the rear of the existing facility. Additional parking, a total of 27 new spaces, is also proposed.

Due to the space limitations on the site the applicant is proposing to place this additional parking in the front setback on the property. The City's Unified Development Ordinance (UDO) at Section 7-8-20(f)(9) provides that in the Commercial Industrial District, "no parking shall be permitted in the required front setback." The applicant applied for a variance to the City's UDO Section 7-8-20(f)(9) but was denied in February of this year by the Board of Adjustment. The Board turned it down primarily because the hardship was a result of the applicant's own actions. The board recognized that the parameters under which they can grant relief are very limited while the parameters for Council are much broader. They felt this was a better CZ application than Board of Adjustment application and were pleased there was another option available as they recognized the reasonableness of the request. As a result, the applicant is now applying for a conditional zoning change to allow for a modification so that parking will be allowed in the front setback. The proposed additional spaces will be approximately 2.9 feet to 18.9 feet from the property line with an average distance of 10.4 feet from the property line. Along the front there is an additional (approximately) 13 feet in sidewalk and green space in the right-of-way.

In addition to the requested modification for the location of the parking the front setback, another modification will need to be granted to allow for a reduction in the width of the street tree/buffer area. This is required per Section 7-11-3(d)(3)d. of the UDO which states that the street tree/buffer area cannot be less than 7 feet in width. Staff is supportive of both modifications as we believe there are site constraints. Also, there is already additional green space in the right-of-way and the fact that the average width meets City standards.

To minimize the impact of the parking in the front, the applicant is proposing to screen the parking areas from the roadway with low, landscaped berms and screen walls approximately 30 inches high.

The Technical Review Committee (TRC) reviewed this proposal on March 7, 2011, and recommended approval with conditions. The applicant has subsequently resubmitted new plans addressing the vast majority of the conditions. The applicant is in the process of addressing the remaining minor conditions.

This conditional zoning request was recommended for approval (5-0 – one absent, one excused) by the Planning and Zoning Commission at its meeting on April 6, 2011. No additional conditions were added.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The applicant is not changing the use of the property. The site has been used for a medical facility for many years now and is surrounded by other medical facilities. The project, if approved must meet the technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications Manual. The existing site plan shows compliance with the City's development standards except those for which a modification is sought.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   Most existing vegetation on the site is being maintained. Proposed plant materials exceed the requirements found in the UDO.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The use of the land is not changing. Enhanced landscaping and the provision of additional needed parking spaces should improve the value of the surrounding properties.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The proposed expansion of the Asheville Surgery Center is moderate in size and the facility is surrounded by similar medical buildings/operations.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The proposed expansion of the Asheville Surgery Center supports the goal of enhancing the role of Asheville as Western North Carolina's regional medical center.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

The proposed use is located just off of a regional commercial corridor (Sweeten Creek Road) and transit Dial-a-Ride service is available from Transit Route 8 of the City's Transit System. The project has received approval from the City's Technical Review Committee concerning issues of water, fire and police protection, etc.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The use proposed is not changing and is only moderately expanding.

This conditional zoning request was recommended for approval (5-0 – one absent, one excused) by the Planning and Zoning Commission at its meeting on April 6, 2011. No one but the developer's representative spoke at the meeting.

Pros:

- Expansion of existing medical facility supports the City's goal of enhancing the role of Asheville as Western North Carolina's regional medical center.
- Additional needed parking for the facility will be provided with the modification.

Con:

- None noted.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable and recommends approval of the conditional zoning request with the modifications to the location of the parking and the width of the street buffer as requested and with the conditions set forth in the TRC and the standard conditions.

Mr. Bill Roark, project manager representing Mission Hospitals, said that this conditional zoning request is necessary to accommodate the needs of the patients. He urged Council to support this conditional zoning request.

Mayor Bellamy closed the public hearing at 6:05 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3966, to conditionally zone property the Asheville Surgery Center located at 5 Medical Park Drive from Commercial Industrial District to Commercial Industrial District/Conditional Zoning, subject to the conditions recommended by staff and subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 27 - PAGE 10**

**E. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING AN ALLEY OFF MADISON STREET**

**RESOLUTION NO. 11-88 - RESOLUTION TO PERMANENTLY CLOSE AN ALLEY OFF MADISON STREET**

Mayor Bellamy opened the public hearing at 6:06 p.m.

Assistant Public Works Director David Foster said that this is the consideration of a resolution to permanently close an alley off Madison Street. This public hearing was advertised on February 25, March 4, 11 and 18, 2011.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjacent property owners, Andy Brokmeyer of Millagro LLC, Scott Blake, and Alison Blake, have requested the City of Asheville to permanently close an alley off of Madison Street.

The Greenway Commission met on March 10, 2011, and unanimously approved the closure. There are no utility conflicts with this closing.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of intent to permanently close an alley off of Madison Street.

Mayor Bellamy closed the public hearing at 6:07 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 11-88. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 33– PAGE 451**

**V. UNFINISHED BUSINESS:**

**A. ORDINANCE AMENDING TO REQUIRE PAWNBROKERS AND SECOND-HAND DEALERS TO SUBMIT DAILY PAWN AND/OR PURCHASE TRANSACTIONS TO LAW ENFORCEMENT THROUGH ELECTRONIC MEANS**

Police Chief Hogan provided Council the following memorandum: "On March 8, 2011, staff presented to City Council an amendment to the City's pawnbroker ordinance which would require pawnbrokers and second-hand dealers to submit their daily pawn and/or purchase transactions of second-hand goods to APD electronically. Council continued the matter to April 26, 2011 in order for staff to host another public meeting and incorporate requested revisions by

City Council into the ordinance as follows: 1) exemption of consignment sales; 2) a $25 threshold and 3) exemption of purchases from garage sales, estate sales and auctions.

"On April 7, 2011, APD held a public information session to give details about City Council's requested revisions, explain the reporting process, and receive feedback from local businesses owners affected by the proposed amendments. At the meeting, staff received a significant amount of community resistance to the proposed amendments, most notably that the reporting requirements would put a significant hardship on local businesses during a difficult economic time.

"Therefore, it is my recommendation that the ordinance be pulled from Council's agenda scheduled for April 26, 2011. At this time, I feel it is best not to move forward with the ordinance but continue analyze the issue over the next 12 months with the possibility of revisiting it in the future.

"I briefed the Public Safety Committee at their April 19, 2011, meeting about the concerns raised at the public information session and my subsequent recommendation. It was their unanimous recommendation to revisit the ordinance at the next Public Safety Committee meeting, which is scheduled for July."

Councilman Russell, Chairman of the Public Safety Committee, said that the Public Safety Committee will revisit the ordinance in July.

**B. MILLS RIVER WATERSHED PROTECTION REPORT**

City Manager Jackson said that as the Mills River Watershed continues to develop, questions about management of the area comprising the watershed and protection of water quality need to be addressed.

The City of Asheville Water Resources Department recognizes the need for additional attention to the issues involving the development of the Mills River watershed. The department is interested in efforts to protect the water quality of the Mills River and strongly supports those efforts. This interest is linked to the inherent responsibility to protect a valuable natural resource and to protect one of the City of Asheville's water sources.

A report (2002) prepared by the Mills River Partnership Planning Committee and the Land of Sky Regional Council addressed a watershed management strategy for the Mills River watershed. The City of Asheville was involved in this effort in a technical advisory role because we operate a water treatment facility on the Mills River.

There was discussion in 2010 about the watershed management strategy study and how to provide for the protection of the Mills River watershed. The City of Asheville and the City of Hendersonville were identified as funding sources for Mills River water quality protection based on the use water from the Mills River. The City of Asheville's position is that the management strategy needs to be updated to include more recent initiatives, and the formation of agencies and governments with responsibilities in the watershed. After the management strategy is updated, an implementation plan for action items should be developed. Documentation of a timetable for implementation milestones and the cost of identified actions will be developed. Cost sharing arrangements will be sought with inter-local agreements between the various benefactors of the management initiatives.

There are currently expenditures for watershed protection of the North Fork and Bee Tree watersheds, but there are not currently expenditures for intervention in the Mills River watershed. It is anticipated that certain action items will require funding from multiple sources to include the City of Asheville Water Resources Department.

A "Mills River Partnership" organization is being formed independently to investigate and address water quality issues in the watershed. It is staff's recommendation that Council continue to support their efforts as an advocacy and advisory group and that the City Council appoint a City Council liaison to serve as the liaison to this new organization, or to endorse Water Resources Director Steve Shoaf, as the City Manager's designee" to monitor their formation.

In response to Mayor Bellamy, Water Resources Director Steve Shoaf explained how the City protects our existing watersheds and why it is important.

Mayor Bellamy noted that the membership of the proposed Partnership consists of a farmer and someone from the WNC Agricultural Center. She felt it was important for the Partnership to consist of not just people who are concerned about the environment and local elected officials, but also include people who own land.

When Mayor Bellamy asked for public comment, no one spoke.

Councilman Davis moved to support the watershed protection efforts and intergovernmental partnership and endorse the on-going partnership by appointing the City Manager, or his designee, to monitor the formation of the Partnership. This motion was seconded by Councilman Smith and carried unanimously.

It was the consensus of Council to instruct City Manager Jackson to develop an information action plan to keep City Council updated on this Partnership.

**C. PRESENTATION OF THE CITY MANAGER'S RECOMMENDED BUDGET**

Administrative Services Manager Lauren Bradley briefly reviewed the City Manager's recommended budget.

She said the budget goals are as follows: (1) Maintain the current tax rate to support financial stability for Asheville families and businesses; (2) Continue to support our workforce as well as the stability of the region's economy by avoiding layoffs, salary cuts, and furloughs; (3) Align resources with strategic planning and core services while minimizing service reductions to other areas; and (4) Develop a comprehensive capital improvement program that maximizes opportunities to address capital goals and Master Plan priorities.

General Fund overview: (1) Overall General Fund budget is decreasing by 0.61% compared to FY 2010-11 budget (a) Second consecutive year of overall decrease in budget; (2) Overall staffing level will decrease by 15 full-time positions (including frozen positions); and (3) Budget challenges have presented transformational opportunities – innovation, efficiency, strategic planning.

Revenues (1) No property tax increase; (2) Revenues projected to decrease by 0.6% (a) 1.2% growth projected in property tax revenue; (b) 3% growth projected in sales tax revenue; and (c) Decreases in investment earnings, grant funding, and development review fees; and (3) No fund balance appropriation.

Revenue Enhancements: (1) Council-approved fee adjustments: $37,900; and (2) No adjustments to business license or development review fees.

Expenditure reductions: (1) Salaries and wages - $1,200,000; and (2) Managed savings - $800,000. Costs avoided: (1) Health Care fringe benefits -$1,500,000-$2,000,000.

Water Fund (1) Continued savings strategies including freezing three vacancies, modifications to take home vehicle policy, and implementation of energy efficiency projects; (2) Adjustments to commercial and multi-family volumetric water rates as well as the wholesale rate

to create more equitable cost recovery across customer classes; (3) No changes are proposed to the residential water rate; and (4) Capital budget includes $6.2 million for water capital improvement projects.

Other Funds: (1) Transit Fund (a) Transit System revenues down $600,000 due to decrease in State funding; partially off-set by decreases in expenditures (i) Increases General Fund transfer by $350,000 for a total of approximately $985,000; and (ii) $500,000 transfer from Parking Fund; (2) Parking Fund (a) Parking revenues are projected to exceed expenses by $358,740 in FY 11-12 (i) Includes partial debt service for 51 Biltmore parking deck; and (ii) Includes transfer of $406,260 in operating funds to parking capital improvements; (3) Civic Center Fund (a) General Fund transfer to Civic Center fund unchanged (i) $300,000 General Fund contribution for facility renovations; (4) Stormwater Fund (a) Stormwater fees remain unchanged (i) $700,000 appropriated from Stormwater Fund balance for major project on Victoria Road; and (5) Golf Fund (a) Expenditure over revenue projections: $150,000-$200,000; and (b) Indentifying opportunities for cost savings to minimize or avoid a Golf Fund transfer in FY 11-12 adopted budget.

She reviewed with Council the Capital Improvement Program 5-year projection (Fiscal Years 2012-2016) which totaled $59.45 Million. She then reviewed the Capital Improvement Program for Fiscal Year 2011-12 which totaled $17.55 Million.

Capital Improvement outcomes include (1) 30% increase in funding for street maintenance (a) 5.9 miles resurfaced; (2) Sidewalk program funding nearly doubled (a) 1.68 miles maintenance, 1.82 miles new sidewalk; (3) 1.5 miles of new greenway construction; (4) $2 million for critical infrastructure (a) Bridge replacement, retaining wall work, etc.; and (5) $7 million for facilities and deferred maintenance (a) $5.5 million for exterior repairs to City Hall.

Next steps include the (1) Budget public hearing May 10; and (2) Budget adoption May 24.

Mayor Bellamy urged Council to e-mail any questions/comments to City Manager Jackson or Ms. Bradley prior to the public hearing on May 10 on items they would like addressed or highlighted at the public hearing.

City Manager Jackson complimented the thorough work of Budget Manager Tony McDowell, Budget Analyst John Sanchez, and especially Ms. Bradley for this excellent work to prepare this budget document. He also recognized the efforts of the entire management team along with the Employee Benefits Committee. This is a balanced budget with ½ million less dollars, no use of Fund Balance and no tax increase. The budget has been presented in a businesslike fashion.

**D. STATE LEGISLATIVE UPDATE**

City Attorney Oast said that this is a review of activity in the 2011 Session of the North Carolina General Assembly.

Council adopted its Legislative Agenda on January 25, 2011. The North Carolina General Assembly convened for the 2011 regular session on January 26. By letter dated February 21, 2011, the City transmitted its legislative agenda and supporting materials to the local delegation. The deadline for submitting local bills to bill drafting and for the introduction of local bills in either house has passed. The next significant deadline in the General Assembly is the May 12 "crossover" deadline, which is the date by which a bill needs to be adopted in one chamber of the General Assembly in order to "cross over" to the other chamber and remain eligible for consideration during this session.

I. Asheville Requests. The status of the specific requests made by Asheville is reported below.

A. Woodfin/Asheville boundary adjustment. In the March 22 update, it was reported that this proposal appeared to be stalled because we had not received information about the boundary adjustment desired by Woodfin to accommodate the proposed roundabout on Merrimon Avenue near the entrance to the Reynolds Mountain subdivision. However, just prior to the March 30 local bill deadline for the House, Woodfin indicated that it was ready to proceed, and began to supply the necessary information. A bill has now been introduced (House Bill 562). We are contacting property owners in the area to advise them of the proposal, but also to advise that their particular properties will not be affected unless they "opt-in," as the proposed legislation provides. We are also working to refine the descriptions of the property that will be affected, and have spoken with a surveyor about this.

B. Clarification of the Video Service Competition Act. Our review of the summaries of bills that have been introduced (we receive the summaries daily) indicates that no bill has been introduced to amend or clarify the Video Service Competition Act, or to otherwise hold the useful internet facilities harmless when local cable t.v. franchises transition to the State cable franchise. We are aware that this, along with the use of municipal right of way for fiber-optic services in general, is an issue of concern in several communities in North Carolina, but all are affected in slightly different ways. We are sharing information with some other communities also seeking clarification of their rights and responsibilities.

On a related note, a bill has been introduced that would limit the ability of local governments to build and operate fiber-optic broadband networks within their community. On March 8, the City Council adopted a resolution expressing our concerns about this bill and limitations that it places on municipalities, and transmitted that bill to our delegation. In April, bills were introduced (HB 595, SB 511) that allow for public/private partnerships in the provision of communications services, including broadband and high speed internet. We will review those, and wait for more information.

C. Clarify legislation regarding financing of energy improvements. We have seen no legislative proposal to clarify local authority regarding financing of energy improvements on individual properties. However, there has been interest in the North Carolina Save$ Energy Program that Council supported by resolution. At the request of Senator Nesbitt's office and the NC Saves Energy Alliance, we supplied Senator Nesbitt with additional information so that he could draft and support a bill. We have been asked also to help identify a sponsor in the House.

II. Other Legislative Matters Affecting Asheville.

A. Annexation. Attempts to limit City initiated annexation continue, and many bills, local and general, have been introduced. Early in the session, bills were introduced in both houses of the legislature to impose a moratorium on annexation until July 1, 2012, and to stay annexations in process, including those that are in some stage of judicial review. This would affect the Biltmore Lake Annexation, and possibly the recently completed Coopers Hawk annexation. In addition, a bill has been introduced specifically to repeal the Biltmore Lake Annexation; this bill is similar in effect to bills that have been introduced regarding other cities in North Carolina, including a bill to repeal an annexation in one eastern North Carolina city that is no longer subject to judicial challenge. A bill has also been introduced to impose a five year moratorium on annexations by municipalities in Buncombe County.

Since the last report, bills have been introduced that are more comprehensive revisions of existing annexation law. A major (but by no means only) point of

contention in the bills is the requirement for a referendum in the area proposed for annexation. This provision has been modified in one of the bills into a "petition veto," which is viewed as only slightly different from a referendum, but preferable to a moratorium of potentially indefinite duration. On April 19 a bill was introduced in the Senate that is a comprehensive revision of the annexation law, but does not include a referendum/veto provision. We will continue to monitor these bills. The North Carolina League of Municipalities has more comprehensive information on the various annexation reform proposals. The League is working on the state-wide annexation bills, and is tracking the local bills. However, they advise that communication from local elected officials about local bills such as Biltmore Lake is crucial. As Council knows, he has written to members of the House delegation expressing our opposition to the local bills affecting our recently completed annexations. While that is helpful, the League has stressed the importance of communications from local elected officials. Information is available from City staff to assist in that process.

B. Greater Asheville Area Regional Airport Authority. On March 30, a bill (HB 552) was introduced to establish the Greater Asheville Regional Airport Authority as an independent authority. The City of Asheville did not request this bill, and had no input into the language of it. The proposal provides for Henderson County, Buncombe County, and Asheville each to have two seats, with the seventh seat to be appointed by the other six, and generally provides for the Authority to have some governmental powers, such as the ability to own real property.

   Most if not all of the land on which the airport is situated is owned by the City of Asheville, and leased to the Airport Authority. Of particular concern to the City regarding the legislation is a provision that requires the City to convey its property to the Airport Authority, apparently without compensation. We are investigating what property would be involved, how the property was acquired, who paid for it, and the effect of FAA regulations on our ability to convey the property and receive compensation.

C. Leicester Incorporation. Last month, a bill was introduced (HB 327) to incorporate the Town of Leicester. Several years ago, when a similar proposal was considered, the City Council expressed concern about the size of the area to be incorporated, and the lack of a referendum requirement. The 2011 Bill contains a provision making the incorporation subject to a referendum. As to the size of the proposed incorporation area, we have been supplied with a map, and are in the process of comparing it to the previous proposal to see how it differs. Of particular concern to us is the Erwin Hills/Lee's Creek area, which was the subject of discussions with Woodfin regarding a proposed annexation agreement demarcation line. He provided Council with a comparison of the previous and current proposals.

III. Other Bills of Interest. Bill numbers and a brief summary are provided below. Please advise if more information is needed on any bill. To our knowledge, these bills have not been adopted yet.

- HB 417 – Extend the time period for tax-deferred holding of real property as a future site for housing for low or moderate income households from 5 to 10 years.

- HB 454 – Direct the Environment Resources Commission to study issues related to safe artificial slope construction in mountainous areas of the State.

- HB 572 – Provide greater accountability for non-profit entities that receive public funding. Requires disclosure of financial statements.

- HB 746 – Protect the constitutional right of citizens to participate in government proceedings. Discourage SLAPP tactics.
- HB 777 – Amend the State constitution to provide that marriage is the union of one man and one woman.
- HB 797 – Limit the extraterritorial jurisdiction of municipalities to urban purposes and to prohibit the inclusion of property in an extraterritorial jurisdiction area for environmental impact laws or regulations.
- HB 861 – Authorize additional revenue options for local governments (food and occupancy taxes, excise taxes, impact fees).
- HB 687 – Provide that when cities and counties enact ordinances or take administrative actions for which there is no statutory authority, and the ordinance or action is an abuse or authority, a successful plaintiff may recover attorney fees.
- HB 652 – Property Owners Protection Act. Award attorney fees to successful litigants in land use cases against local government.
- SB 386 – Repeal prohibition on local government contracts with labor unions.
- SB 412 – Make violations of the public records and open meetings laws a Class 3 misdemeanor.
- SB 515 – Authorizing the Joint Legislative Commission on municipal incorporations to study the procedure for incorporating municipalities.
- SB 601 – Revise statutes relating to regional public transportation and allow local governments to enter into funding agreements.

This is only a partial list, and we have probably not included some bills that would be of interest. As always, please let us know if you want more information on the bills listed above, or information on an item not covered in this report.

Regarding the Leicester incorporation, he showed a map of the area included in 2008. Council at that time was concerned with the large footprint and felt the incorporation should be subject to a referendum. The 2011 Bill contains a provision making the incorporation subject to a referendum. In addition, they have now come back to us with a significantly smaller footprint; however, it includes some additional area not included in the 2008 proposal. The additional area is ¼ square mile but the expansion of the boundary is closer to Asheville. In 2008 Council adopted a resolution approving incorporation of the Town of Leicester subject to certain concerns.

Mayor Bellamy said that the ¼ square mile addition was to include an entire subdivision.

In response to Councilman Russell, City Attorney Oast said that part of the statutory process, requires the legislature to seek our feedback since we are close to the proposed Leicester boundary line.

Vice-Mayor Newman asked if instead of endorsing or opposing Leicester's incorporation that Asheville state that it does not have a recommendation on creation or non-creation of this municipality. But, if the legislature decides to move forward and it is created, Asheville believes

there should be a referendum and that the step-back boundary on Leicester Highway would be our preference.

In response to Councilwoman Manheimer, City Attorney Oast said that the statute requires notification of proposed incorporation and we are qualified to express our approval of the proposed incorporation. If Council approves the incorporation it would be helpful to Leicester. If not approved, it is not the end of their effort. The statute has been satisfied by notifying us and giving us the opportunity to approve it or not.

Councilman Davis did not support the newly drawn lines.

Councilman Russell moved to approve Leicester's efforts, subject to the concerns of the additional area close to Asheville and a referendum. This motion was seconded by Councilwoman Manheimer.

In response to Councilman Bothwell; City Attorney Oast said that there is a menu of services that incorporated municipalities must provide.

Mayor Bellamy wondered by Council did not want to give comments to our legislatures on this incorporation when Council gave comments on the Mills River incorporation. She felt the people in favor of incorporation of Leicester reduced the boundary lines, but felt it was necessary to include the addition property in order to not split the subdivision. She supported Leicester's incorporation with no concerns.

In response to Councilman Smith, Urban Planner Blake Esselstyn said that the proposed Leicester incorporation is roughly 24 miles (in 2008 it was 37 miles). The City of Asheville is 44 square miles. The population for the proposed Leicester incorporation is approximately 11,000.

Vice-Mayor Newman would not support the motion as he felt it was bad land use policy to incorporate vast undeveloped rural land into municipalities.

The motion made by Councilman Russell and seconded by Councilwoman Manheimer carried on a 4-3 vote, with Vice-Mayor Newman, Councilman Bothwell and Councilman Davis voting "no."

In response to Councilwoman Manheimer's earlier question in the Leicester incorporation issue, City Attorney Oast clarified his statement in that if a proposed incorporation area fails to get the approval of a nearby adjacent city, then the Commission on Municipal Incorporations may not make a positive recommendation. But in this case, we have gotten a conditional approval. The last time this happened, the conditional approval was okay.

Regarding the bill to establish an independent Airport Authority, Councilman Davis was concerned that Asheville did not have any input into the language of the bill. He understands the regional approach, but the runways were built by Asheville taxpayers and there is property that we should enjoy some partnerships with the Airport Authority. He was also concerned with the reduction of Asheville's seats on the Authority being reduced to two.

In response to Vice-Mayor Newman, City Attorney Oast said that he did not recall the previous legislative proposal a couple of years ago to establish an independent Airport Authority having the property transfer provision.

Vice-Mayor Newman, member on the Regional Airport Authority, said that he is open to the idea of an independent Authority because in some ways it doesn't seem like a major change in terms of how the Airport operates. There are lots of federal funding that has gone into the development and operation of the Airport. Much of how airports are run in the United States is dictated by the Federal Aviation Administration (FAA), not at the local level. Even though there

has not been a requirement to appoint a representative from Henderson County, the Authority has done that because they felt they should be at the table. One of the major challenges for the Airport is a lot of residents who live in WNC who choose to fly drive to Charlotte or Greenville. We have been working hard to encourage people in WNC to fly local. He liked the idea to continue growing the regional support for the Airport; however, he is concerned about precedent of the title transfer issue. He questioned having the legislature essentially seize a local government's real estate and give it to someone else. The other concern the Airport Board members have is that the legislation is very specific in terms of the types of people that the different local governments can appoint to the Board. The Board felt there would be many excellent people who want to serve on the Board who would be excluded from serving because of the restrictions. The Board also took a position against the prohibition on elected officials serving on the Board. The Board feels there is a lot of benefit for having a combination of elected and unelected people serving together.

In response to Councilman Russell's shock that the bill has moved forward with no input from the City, Vice-Mayor Newman said that the Airport Authority has endorsed the concepts of an authority, but took specific positions against the Board appointment provisions in terms of elected officials and who can be appointed.

Councilman Russell felt it was important that the City express its position on this bill soon. He felt the legislature should not act on this bill until the City of Asheville has had an opportunity to do their due diligence on issues affecting City taxpayer dollars and land.

In response to Councilwoman Manheimer on whether the provision requiring the City to convey property within 90 days of enactment of the bill is challengeable, City Attorney Oast said that staff is researching the enforceability of that provision. He said that much, if not all, of the property was acquired with significant federal assistance. It may have been the initial acquisition was a higher percentage of City funds than the current 90% federal grant funds.

Vice-Mayor Newman questioned if they can enact the bill to create an independent authority without the conveyance of property provision. City Attorney Oast didn't think ownership of the property is a necessary element of an independent authority.

Vice-Mayor Newman moved to communicate to our legislators that the City of Asheville is concerned about the following provisions (from a substantive level as well as from a precedent prospective) that (1) dictate in great detail who can serve on the board; (2) prohibit elected officials being able to serve on the board; and (3) dictate transfer of real property of the taxpayers of Asheville to another entity. This motion was seconded by Councilman Russell.

Councilman Davis asked for a friendly amendment to consider a stronger term than "concern". Vice-Mayor Newman and Councilman Russell accepted the friendly amendment to rephrase the motion to "strong concern and objection based on the information we currently have."

Mayor Bellamy opposes the motion. She has not sat idly by on this issue and has asked City Attorney Oast many questions. She has a concern that this independent authority bill was introduced without any consideration or common courtesy of Asheville although Asheville invested in the Airport many years ago. That is wrong and if we show support, then it looks as though writing bills without any consideration of municipalities is okay. She is also concerned that we are losing one seat on the Board and prohibiting elected officials from serving. She has concerns about the bill itself and will not support the motion, unless it says we are opposed to the bill. This is a precedent that a group from Raleigh can create authorities without any input from cities.

Councilman Davis felt the motion should be that we completely reject the idea, but at least the motion on the floor is doing more than doing nothing.

City Attorney Oast said that he is glad to communicate to the legislature; however, he could not over-emphasize the importance of City Council contacting our legislators to express objections or approvals of anything that affects Asheville.

Regarding compensation to Asheville, Vice-Mayor Newman felt that it's probably not possible to do some general sort of compensation to the City for its historic investments in the Airport. There is a lot of FAA funding tied up in the Airport. Basically, what the FAA says is if you want funding in the airport, then it all has to be used for aviation purposes. One place where it could be some potential would be if any of the properties at the Airport are ever developed for non-aviation purposes. Many years ago the City taxpayers helped with funding at the Airport to acquire a large piece of land, most of which is where the Airport is located and most is used for Airport purposes. But, there are some pieces of real estate around the fringes of the Airport that may not be needed now, or in the future, for more Airport purposes. If those properties are developed for commercial purposes and if they were acquired by City taxpayer funding, then we do have an historic equity interest in those properties. We could say that if there are any properties that are ever developed for non-aviation commercial purposes that were acquired with City funds, the City's equity interest in that property should be recognized and compensated.

Mayor Bellamy has a concern of transferring property that is not currently being used for aviation purposes. She has asked the City Attorney for information on what exactly what land is out there. Not everything was acquired with FAA dollars. We should not turn over every piece of land that was bought with the idea of the Airport, because some has commercial value and some is vacant property. There are opportunities for other uses besides aviation. She would not automatically title all that land over to the independent authority.

Vice-Mayor Newman felt his motion covered Mayor Bellamy's concern in that we are opposed to that. The second part would be if under whatever circumstances if they were every developed for non-aviation commercial purposes, by our consent or without our consent, that the City's historic equity investment in this property should be recognized and compensated.

Councilman Russell felt the City should state that they are opposed to this bill and the process should be very inclusive of Asheville, and any future use and major changes should be done in a more joint venture and collaborative manner. There has been a lot of things he has just learned from the discussion at this meeting. Mayor Bellamy supported this action.

Vice-Mayor Newman felt that the reality is that there is a cross-over deadline a couple of weeks away. He felt the legislators who are supporting this will say if we don't do something now, then the bill can't be re-introduced for two years. He is fine with us saying that until there is a better process and we don't want this bill enacted, but he also thinks there is value in outlining (based on the information we do have) what some of our really substantive concerns are, so that if something does get forwarded there may be ways to take those specific concerns into consideration.

Mayor Bellamy is not supportive with an independent Airport Authority as proposed unless there are significant changes. She had no problem for the bill to be delayed.

Councilwoman Manheimer said that she too is frustrated that there has been no collaborative process, but she is concerned the bill will pass. She felt this may be our only chance to say anything about the bill. She would at least like to convey that if this happens, we would at least like these components addressed.

Councilman Bothwell felt we should express our objection to the bill and then list our specific objections.

Councilman Smith would be comfortable in saying we oppose the bill based on these points. A precedent is being set and what's happening is the General Assembly is running rough-shot over municipal governments. To have representatives that don't represent all City residents making decisions for the entire City of Asheville without our input is inherently wrong. We are beginning to see a pattern develop with this and unless we begin to say we need to be included, if we are going to have good government that truly represents all the people of the City of Asheville, it is our responsibility to take that position.

Vice-Mayor Newman restated his motion as follows: Based on the information we have at this time and with the absence of the opportunity for the City Council and Asheville taxpayers (who have invested in the property to have meaningful input on it), we are opposed to the bill with the following specific concerns (1) provisions to restrict the types of citizens who can serve on the board, (2) proposal to transfer title away from the taxpayers of Asheville to another entity (also sets a precedent); and (3) if any properties are developed, under any circumstances where City tax-payer funding was used, for non-aviation purposes that the City's equity position be recognized and considered. This motion was seconded by Councilman Russell.

Councilman Russell asked for a friendly amendment that an additional concern is the make-up of the board in terms of the number of people from each jurisdiction who can serve on the Board. Vice-Mayor Newman accepted the friendly amendment.

Councilman Davis also asked for a friendly amendment that we emphasize that we are strongly opposed (especially strongly concerned regarding compensation) to this happening without our input and ask if this moves forward that the concerns outlined be taken into consideration. Vice-Mayor Newman and Councilman Russell accepted the friendly amendment.

Vice-Mayor Newman also amended his motion that we formally request an opportunity to dialogue further regarding the proposal. Councilman Russell agreed with the amendment.

Vice-Mayor Newman said that he felt there is a way this can be done right, but he is at least open to the idea of an independent authority. With federal regulations over the management of an airport, this is not a huge change.

Mayor Bellamy hoped our legislators and Airport Authority will give Council the opportunity to understand the changes proposed that impact our holdings and our partnerships. We need to be a part of the dialogue.

Vice-Mayor Newman's sense is that in terms of the Airport Authority, he was not sure they were aware of the title transfer issue.

When Mayor Bellamy asked for public comment, no one spoke.

The amended motion made by Vice-Mayor Newman and seconded by Councilman Russell carried unanimously.

Councilman Smith said that there are things moving in the state house that they are not asking for input when it will affect all the citizens of a city. It seems to him that we may be coming towards a time that it may be helpful to let Raleigh know what it is the sense of this Council that we would like to be included in conversations that affect the City of Asheville.

Mayor Bellamy said that she is traveling to Raleigh on May 4 and will most certainly bring up with issue with our legislators.

Councilman Smith moved that it is the sense of the Asheville City Council that good government that represents all the people takes into consideration the views of municipally elected officials. Recent moves to legislate without the courtesy of consultation or collaboration

and without the opportunity to deliberate are antithetical to principles of representative democracy and working towards the greater good. This motion was seconded by Councilman Bothwell.

Vice-Mayor Newman asked for time to think about the specific language before voting on the motion. Councilman Smith withdrew his motion.

It was the consensus of Council to ask City Attorney Oast to draft a letter for the Mayor expressing, on the City's behalf, the lack of opportunity to participate in the deliberative process on legislation that has substantial affect on the City of Asheville.

Councilman Bothwell hoped we are communicating to our legislators that we oppose HB 777.

Councilman Bothwell also asked Council to support the effort to legalize medical marijuana.

## VI. NEW BUSINESS:

### A. RESOLUTION NO. 11-89 - RESOLUTION ADOPTING THE CITY COUNCIL STRATEGIC OPERATING PLAN GOALS FOR 2011

Administrative Services Director Lauren Bradley said that this is the consideration of a resolution reaffirming City Council's Strategic Operating Plan for 2011.

***2011 Strategic Operating Plan Update*** - At its February 2011 retreat, the Asheville City Council affirmed its commitment to six key focus areas that serve as the foundation for the City of Asheville's Strategic Operating Plan. These focus areas are:

- **Affordable** - *The City of Asheville will offer a standard of living that is affordable and attainable for people of all income levels, life stages and abilities.*
- **Fiscal Responsibility** - *The City of Asheville will support a stronger, more prosperous community by making smart investments that accomplish lasting, tangible returns.*
- **Green & Sustainable** - *Asheville will be the southeastern leader in clean energy and environmental sustainability.*
- **Job Growth and Community Development** – *Asheville will support a dynamic and robust local economy with balanced sustainable growth.*
- **Safe** - *Asheville will be one of the safest and most secure communities when compared to similar cities.*
- **Multimodal Transportation** – *Integrate and implement a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit, greenways, streets, rivers and access to river, and other system improvements resulting in a funding priority list.*

***Performance Measurement and Reporting*** - During the 2010-2011 fiscal year, city staff continued to provide City Council with quarterly management reports in order to provide information about performance tied to the organization's adopted strategic goals and related initiatives.

Moving forward with the comprehensive quarterly management report, Council will continue to incorporate quarterly updates from each Council Committee Chair. Each Chair will present to the Council on policy initiatives designed to further achievement of the strategic goals.

Pros:

- Provide Council and city staff with an overall direction and goals of the organization
- Provide Council and city staff with a measure of success

Con:

- None-noted

The Strategic Operating Plan will provide direction for Council and the Executive Management Team throughout the budget process. Additionally, the estimated fiscal implications for the 2011-2012 fiscal year can be found in the report.

City staff recommends City Council adopt a resolution reaffirming Council's Strategic Operating Plan.

When Mayor Bellamy noted a change in the Juvenile Justice Program, Ms. Bradley said they will revise the funding notes; however, that the Strategic Operating Plan will be a put into a formal document without the progress notes or fiscal implications.

With Council's goal of 15% Fund Balance, Mayor Bellamy said that at the end of the audit year, we accounted for $2 Million (that we had told the Local Government Commission that wasn't accounted for) in our budget which impacted the Fund Balance. That would have taken us over the 15% minimum threshold. She asked what happened. Ms. Bradley said that at that point the calculation was projecting that we might be somewhere around 14.8% when you took that into consideration. After we went back and worked through the numbers, in actual process we have seen this fiscal year the Fund Balance is at the 14.2% level and that is what we are projecting will end the fiscal year. With the proposed budget, there is no Fund Balance appropriation so we would expect that to remain constant through next year. What could affect that number is if revenues recover beyond what we have projected (although she felt that was unlikely next year). The following year there might be some potential for staff to make some formal recommendations to Council to address our Fund Balance level.

Mr. Mark Cates noted the big challenge facing the City is uncertainty but he was pleased that the City will be supporting businesses through the reduction of taxes, fees and regulations

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 11-89. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 33 – PAGE 453**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

**Closed Session**

At 7:39 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: Caledonia, LLC, Frank Howington, III, and City of Asheville. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The property is located in the Cedar Hill Road area. The

statutory authorization is contained in G.S. 143-318.11(a)(5); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously.

At 7:50 p.m., Vice-Mayor Newman moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

Magdalen Bouleson
City Clerk

Mayor

Tuesday – May 10, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Bothwell gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING MAY 15-21, 2011, AS "NATIONAL PUBLIC WORKS WEEK"**

Mayor Bellamy read the proclamation proclaiming May 15-21, 2011, as "National Public Works Week" in the City of Asheville. She presented the proclamation to (1) Ronnie Hoglen and Joel Tweed from the Transportation Department; (2) Michael Dixon (Streets), Rachael Banks (Fleet Management) and Robert Johnson (Sanitation) from the Public Works Department; and (3) James Ball, Ricky Foster, Andrew White, Gene Ball, Darrell Ball and Kathleen Conner from the Parks & Recreation Department.

**B. PROCLAMATION PROCLAIMING MAY 22, 2011, AS "ASHEVILLE LIVING TREASURES DAY"**

Mayor Bellamy read the proclamation proclaiming May 22, 2011, as "Asheville Living Treasures Day" in the City of Asheville. She presented the proclamation to Ms. Carmen Ramos-Kennedy; and Asheville Living Treasures Jessie Coleman, Mary T. Parker and Lucille Flack Ray. Mayor Bellamy asked for a moment of silence as Mr. Hyman Dave, an Asheville Living Treasurer, passed away on Friday. Ms. Carmen Ramos-Kennedy stated the difference these individuals have made to our community.

**C. PROCLAMATION PROCLAIMING MAY 14, 2011, AS "STAMP OUT HUNGER DAY"**

Mayor Bellamy read the proclamation proclaiming May 14, 2011, as "Stamp Out Hunger Day" in the City of Asheville. She presented the proclamation to Mr. Gerald Brown, who briefed Council on the program.

**II. CONSENT AGENDA:**

At the request of Councilman Russell, Consent Agenda Item "E" was removed from the Consent Agenda for discussion and/or an individual vote.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 26, 2011**

**B. ORDINANCE NO. 3967 - ORDINANCE CONCURRING IN A SPEED LIMIT CHANGE ON CEDAR LANE, TWO SYCAMORE DRIVES, LINDEN STREET, PEACHTREE STREET, SYCAMORE TERRACE AND LINDEN STREET IN SOUTH ASHEVILLE FROM 35 MPH TO 25 MPH**

Summary: The consideration of an ordinance concurring in a speed limit change on SR 3159 (Cedar Lane), SR 3165 (Sycamore Drive), SR 3171 (Sycamore Drive), SR 3172 (Linden Street), SR 3174 (Peachtree Street), SR 3175 (Sycamore Terrace), and SR 3205 (Linden Street).

According to state law (NCGS # 20-141), the statutory speed limit in North Carolina is 35 mph inside municipal corporate limits for all vehicles and 55 mph outside municipal corporate limits for all vehicles except for school buses and school activity buses.

Furthermore, when an engineering and traffic investigation determines that a speed limit other than the statutory 35 mph speed limit would be reasonable and safe along a state-maintained street that is inside municipal corporate limits, a concurring ordinance from the municipality is needed. Typically, these investigations are done by municipal staff but it is not unusual for the North Carolina Department of Transportation (NCDOT) to do the investigations along their streets.

The Division 13 Traffic Engineer for NCDOT recently completed an engineering and traffic investigation and determined that a 25 mph speed limit would be reasonable and safe on the following streets:

- SR 3159 (Cedar Lane) from a point 0.19 mile west of US 25-A (Sweeten Creek Road) eastward to US 25-A (Sweeten Creek Road).
- SR 3165 (Sycamore Drive) from a point 0.12 mile east of US 25-A (Sweeten Creek Road) eastward to US 25-A (Sweeten Creek Road).
- SR 3171 (Sycamore Drive) from US 25 (Hendersonville Road) northeastward to a point 0.32 mile northeast of US 25 (Hendersonville Road).
- SR 3172 (Linden Street) from a point 0.04 mile south of SR 3159 northward to a point 0.03 mile north of SR 3159.
- SR 3174 (Peachtree Street) from SR 3159 northward to a point 0.18 mile north of SR 3159.
- SR 3175 (Sycamore Terrace) from a point 0.03 mile west of SR 3172 eastward to a point 0.11 mile east of SR 3172.
- SR 3205 (Linden Street) from a point 0.15 mile south of SR 3162 northward to SR 3162.

The subject streets serve a well established residential community in South Asheville. City traffic-engineering staff agrees with the recommended action.

This action complies with the City Council Strategic Operating Plan in the Safety focus area by improving the "street experience" for all users including pedestrians, bicycles, and motorists in a primarily residential corridor.

Pros:

- The North Carolina Department of Transportation did the engineering and traffic investigation to determine the reasonable and safe speed limit.
- Since the subject streets are state-maintained streets, the North Carolina Department of Transportation will install and maintain the appropriate signs.

Con:

- There are no known cons with the subject action.

There is no fiscal impact with the subject action. The NCDOT will be installing and maintaining the appropriate signs.

City staff recommends that City Council approve an ordinance concurring in a speed limit change on SR 3159 (Cedar Lane), SR 3165 (Sycamore Drive), SR 3171 (Sycamore Drive), SR 3172 (Linden Street), SR 3174 (Peachtree Street), SR 3175 (Sycamore Terrace), and SR 3205 (Linden Street) in South Asheville from 35 mph to 25 mph.

**ORDINANCE BOOK NO. 27 - PAGE 14**

**C. RESOLUTION NO. 11-90 - RESOLUTION AMENDING THE 2010 COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT WITH THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL**

Summary: The Asheville-Buncombe Community Relations Council has requested an amendment to their 2010-2011 Community Development Block Grant (CDBG) Grant Agreement, to allow for greater flexibility in the use of those funds.

The contract between the City and Asheville-Buncombe Community Relations Council (ABCRC) calls for the full grant amount of $45,000 to be disbursed for a full-time investigator's salary. HUD Hair Housing Assistance Program funds can also be used to pay for the investigator's salary. ABCRC requests that CDBG funds also be allowed to be used for the supervision and management of the fair housing activity, and other management costs.

The projects directly support the City's Strategic Operating Goals: *Affordable*: The amendment is supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville.

Pro:

- The amendment will enable ABCRC to operate through the end of this fiscal year

Con:

- None

The Community Development Block Grants subject to the amendment are allocated in the City's Consolidated Annual Action Plan for CDBG and HOME Programs for 2010. There is no change in the allocated amount.

The Housing and Community Development Committee has positively reviewed this request and staff recommends that City Council approve the requested amendment.

**RESOLUTION BOOK NO. 34 – PAGE 1**

**D. RESOLUTION NO. 11-91 - RESOLUTION AUTHORIZING CONDEMNATION TO ACQUIRE PROPERTY WITHIN AN EXISTING SEWER EASEMENT IN ORDER TO ESTABLISH A NEW SEWER LINE**

Summary: The consideration of a resolution authorizing staff to proceed with condemnation of a portion of an existing sewer easement for the purpose of providing sewer access to adjoining properties.

In 2003 and 2004, the City approved two Housing Trust Fund loans totaling $217,000 for the development of forty-two (42) townhomes in the first phase of a project in West Asheville. The original development plan proposed a maximum of 176 units over three phases. Following completion of the first ten (10) units the project stalled and the developer defaulted on both the construction loan and the City's Housing Trust Fund loans.

After several failed workout plans, the property went to foreclosure in August 2009. In addition to the partially developed parcel, other property securing the construction loan was also sold at auction. To protect the taxpayer investment in the Housing Trust Fund, the City purchased two of the adjoining parcels below market value (Parcel no. 962816976700000 and Parcel no. 962827416400000). The partially developed parcel (Parcel no. 96282706260000) containing the MSD pump station was purchased by the Managing Member of the Villas at Cedar Hill, LLC who participated as a private bidder in the sale. Immediately following the sale, a new LLC (Resurgence Development) was created and took title to the property.

The City has negotiated an agreement with Habitat for Humanity to purchase the adjoining parcels obtained at the foreclosure sale. Sale of this property would immediately return $300,000 to the Housing Trust Fund and an additional $150,000 over time. A development plan is in place to construct 55 single family homes that will be purchased by low-income families. The closing is contingent upon the City providing sewer access to the property. There is an existing recorded sewer easement that will allow sufficient access to the pump station, which is located less than 50 feet from the property boundary; however, an additional line would need to be added in that easement, thereby creating an "additional burden".

When the City inquired about an easement to allow this access, the developer responded that he would accept $250,000. Subsequent inquiries were referred to the developer's attorney, who has not returned telephone calls. Staff research has indicated the value of the easement is more likely to be in the range of $500- $5,000.

The alternative to a voluntary conveyance is condemnation. The condemnation necessary to achieve the sewer access would be limited to a portion of the existing easement, with perhaps a temporary construction easement needed on either side of the existing easement area. The easement for the additional pipe would be transferred to MSD following the condemnation. MSD has indicated they will accept the easement. Access to the easement will not adversely impact the existing development on the parcel controlled by Resurgence Development. The cost of construction of the sewer line in the easement would be the responsibility of the developer, not the City.

Under North Carolina Law, municipalities have the authority to use the power of eminent domain to acquire private property through condemnation for the public use and benefit and specifically for the purpose of establishing, extending or improving sewer lines and systems. The proposed condemnation meets both the public use and the public benefit tests required by law.

The associated costs of a condemnation are *estimated* at $15,000. This would include fair compensation for the easement as established by an appraisal, the appraisal, survey, legal fees, and associated court costs. These costs would be a direct administrative charge to the Housing Trust Fund. The request to proceed with condemnation was presented to the Housing and Community Development Committee at their April meeting, and they voted unanimously to bring this matter before City Council.

The proposed action directly supports the City's Strategic Operating Goals as follows: (1) *Affordable*: The proposed action supports the City's goal of providing safe and decent affordable housing units to the citizens of Asheville; and (2) *Sustainable*: The proposed action will enable the development of new housing units located near transit lines, higher urban development densities, and encourages higher standards of energy efficiency. The proposed action also supports the priorities of the Consolidated Strategic Housing & Community Development Plan by increasing the housing stock, providing affordable single family homes, building high quality energy-efficient housing, and coordinating development with transportation and jobs.

Pros:

- Allows for future affordable housing development on adjoining parcels as originally planned.
- Allows City-owned property to be sold and developed, resulting in substantial increased tax revenues upon build-out.
- Allows the City to proceed with sale of property, returning $300,000 immediately to the Housing Trust Fund and an additional $150,000 over time.
- Increases usage of the pump station which is currently functioning at minimum capacity.
- Brings resolution to a situation that has consumed vast amounts of staff time and administrative expense over a seven-year time frame.

Cons:

- Requires additional investment of an estimated $15,000 from the Housing Trust Fund at a time when resources are scarce.

Administrative expenses related to a condemnation filing are estimated at $15,000 and will be charged directly to the Housing Trust Fund. If the condemnation is completed, the sale of City-owned property to Asheville Area Habitat for Humanity will return $300,000 to the Housing Trust Fund immediately upon closing, and an additional $150,000 over time. The sale is anticipated to be completed in November 2011. Future City tax revenues are estimated at $28,875 annually following construction of fifty-five (55) single family homes by Habitat on the adjoining parcels presently owned by the City.

As recommended by the Housing and Community Development Committee, staff recommends City Council adopt a resolution approving:

1. Condemnation to acquire property for the public purpose of establishing a new sewer line to connect a property to be developed for affordable housing to an existing sewer system and pump station.

2. The attorneys representing the City to institute the necessary proceedings under applicable provisions of the North Carolina General Statutes to acquire the property herein described.

3. The City Manager to execute any necessary documents related to the acquisition by condemnation of property for a sewer easement and the conveyance of this sewer easement to MSD.

**RESOLUTION BOOK NO. 34 – PAGE 2**

**E. RESOLUTION SETTING A LIVING WAGE FOR CITY OF ASHEVILLE FULL- AND PART-TIME EMPLOYEES AND CONTRACT EMPLOYEES WORKING ON GENERAL SERVICE CONTRACTS $30,000-$90,000 IN VALUE**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**F. RESOLUTION NO. 11-94 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A SUPPLEMENTAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO INCREASE THE PROJECT BUDGET FOR THE LONG SHOALS ROAD PROJECT**

**ORDINANCE NO. 3968 - BUDGET AMENDMENT FOR SUPPLEMENTAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE LONG SHOALS ROAD PROJECT**

Summary: The consideration of a resolution authorizing the Mayor to execute the Supplemental Agreement with the N.C. Dept. of Transportation for the Long Shoals Road Project, and the associated budget amendment, in the amount of $2,059,242.

On March 23, 2005, the Mayor executed a Utility Agreement between the City of Asheville and the NCDOT for the Long Shoals Road Project, TIP # R-2813C, in the amount of $1,805,799.61. The project consisted of the installation of a new 24-inch water line on Long Shoals Road from East of I-26 to US 25 (Hendersonville Road). The 16-inch plastic line was replaced to loop the water system to the west and south regions of the system and to eliminate costly line breaks, which caused water outages to area customers.

On March 10, 2009, the NCDOT issued a Memorandum stating that additional materials were required for the water line replacement, which caused a necessary increase of $253,441.88 for an amended project budget of $2,059,241.49. A Supplemental Agreement to increase the cost of the project was provided to Water Resources on April 14, 2011, for approval and execution by the Mayor and City Council.

This project is part of City Council's strategic plans to maintain City infrastructure.

Pro:

- Approval of the Supplemental Agreement will allow Water Resources to fully reimburse the NCDOT for the City's participation costs and to close out the project.

Con:

- If the Supplemental Agreement is not executed, then the NCDOT will charge a late payment penalty and interest on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105.241.1.

Water Resources created a capital project to retain contingency funds needed for the increase until the Supplemental Agreement was received by the NCDOT. The contingency funds will cover the entire cost for the increase, so no other capital projects are affected.

| | |
|---|---|
| NCDOT Long Shoals Rd Original Budget | $1,805,799.61 |
| Project Increase | $ 253,441.88 |
| Total Project Cost | $2,059,241.49 |

City staff recommends City Council adopt a resolution authorizing the Mayor to execute the Supplemental Agreement with the NCDOT for the Long Shoals Road Project, R-2813C, increasing the project budget from $1,805,799.61 to $2,059,241.49.

**RESOLUTION BOOK NO. 34 – PAGE 5**
**ORDINANCE BOOK NO. 27 - PAGE 15**

**G. ORDINANCE NO. 3969 - BUDGET AMENDMENT FROM BB&T TO COVER COST OF MATERIALS AND NEW EQUIPMENT TO SUPPORT A VOLUNTEER PROJECT AT THE STEPHENS-LEE COMMUNITY CENTER**

Summary: The consideration of a budget amendment, in the amount of $5,400, from BB&T to cover cost of materials and new equipment to support a volunteer project at the Stephens-Lee Community Center.

Nationally, BB&T has created a corporate volunteer program to encourage local branches to give back to the community. In addition to making a provision for paid time off for staff to volunteer, BB&T has created a pool of funds to be used to support projects identified by local BB&T branches. Asheville Area BB&T branches have chosen the Stephens-Lee Center as the site for their 2011 project and, in addition to providing approximately 60 volunteers over 4

days, will be donating $5,400 to cover the costs of materials and improvements for the Center. A representative from BB&T has been working with Parks, Recreation and Cultural Arts staff to develop a scope of work and indentify materials and equipment necessary to complete the project. Members of the East End Neighborhood Association and Stephens-Lee Alumni Association will be invited to participate in the project. The project is slated to occur on May 17 through 20, 2011.

The project will include painting the entrance hall, kitchen, all-purpose room and classrooms, purchasing and spreading appropriate mulch for two play areas and replanting and mulching the front planting beds of the Center. The project will culminate in a cook-out at Stephens-Lee for neighborhood and Stephens-Lee alumni organizations members, BB&T volunteers and Center program participants and staff provided by BB&T staff.

This action complies with the City Council Strategic Operating Plan in that it addresses the city's aging infrastructure and improves the customer experience at the Stephens-Lee Center. This action also reflects the City of Asheville's efforts to improve and extend services by identifying volunteer opportunities and working with community groups to accomplish improvement projects on public property and in public facilities.

Pros:

- Improvement in infrastructure and customer experience at the Stephens-Lee Center
- Demonstration of community support for the East End Community
- Incorporates citizen volunteers in providing essential services to the community

Con:

- None noted

The project has been budgeted so that the donation will cover all costs for the project.

City staff recommends City Council adopt a budget amendment to accept the donation from BB&T in the amount of $5,400.

**ORDINANCE BOOK NO. 27 – PAGE 17**

**H. ORDINANCE NO. 3970 - BUDGET AMENDMENT TO ACCEPT REBATE FUNDS FROM PROGRESS ENERGY**

Summary: The consideration of a budget amendment, in the amount of $32,581.89, from Progress Energy Carolinas, to refund expenses incurred during the City Hall Lighting Retrofit for premium efficiency lighting products.

City Council previously approved accepting grant funds for the Energy Efficiency and Conversation Block Grant (EECBG) for various municipal retrofits including the City Hall Lighting Retrofit. In the six months since retrofit completion this project has already produced hard energy savings of $8,400. The proposed budget amendment is to accept a rebate check from the electric utility for using premium efficiency fixtures in this retrofit. Once accepted these rebate funds would then be used in the LED streetlight project previously approved by City Council.

This action supports City Council's Strategic Operating Plan goals to reduce the municipal carbon footprint 4% each year.

Pros:

- Accepting this rebate check will allow the city to better leverage the grant funds awarded by the Department of Energy to further City Council's goals in energy efficiency.

Cons:

- None can be identified.

The $32,581.89 will be used as revenue to further fund energy efficiency programming.

City staff recommends City Council adopt the budget amendment to appropriate revenue and budget expenditures associated with the Progress Energy Rebate check.

**ORDINANCE BOOK NO. 27 – PAGE 19**

**I. ORDINANCE NO. 3971 - BUDGET AMENDMENT TO ACCEPT STIPEND FROM WARREN WILSON COLLEGE FOR SUMMER INTERN IN THE OFFICE OF SUSTAINABILITY**

Summary: The consideration of a budget amendment, in the amount of $ 1,800, from Warren Wilson College, to appropriate revenue and budget expenditure accounts associated with the payment for one part time temporary intern in the Office of Sustainability.

The City of Asheville and Warren Wilson College (WWC) formed a strategic partnership in June 2007 to collaborate in our efforts to reduce green house gas emissions. A valuable part of this partnership is to provide professional development opportunity to WWC students. Warren Wilson College will provide the funds for payment to this intern upon approval of this budget amendment request.

The Sustainability Policy Intern will learn about local government policy and administrative policy through working with staff to support the Sustainability Advisory Committee on Energy and the Environment (SACEE).

This action complies with the City Council Strategic Operating Plan in the following ways: (1) Expand partnerships with UNC-Asheville, AB Tech and other institutions; and (2) Attract and retain quality employees with an emphasis on local labor pool development opportunities.

Pros:

- Internship supports the Transportation Department in implementing the Transit Master Plan
- Internship supports the City Office of Sustainability efforts to reduce carbon footprint of city operations

Cons:

- None identified.

The $1,800 to payment of interns stipend will be provided by Warren Wilson College to be paid through the City of Asheville.

City staff recommends City Council adopt the budget amendment to appropriate revenue and budget expenditures associated with payment of an intern's stipend.

**ORDINANCE BOOK NO. 27 – PAGE 21**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Smith moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

**ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

**E. RESOLUTION NO. 11-93 - RESOLUTION SETTING A LIVING WAGE FOR CITY OF ASHEVILLE FULL- AND PART-TIME EMPLOYEES AND CONTRACT EMPLOYEES WORKING ON GENERAL SERVICE CONTRACTS $30,000-$90,000 IN VALUE**

Summary: The consideration of a resolution setting a living wage for City of Asheville full- and part-time employees and contract employees working on General Service contracts $30,000-$90,000 in value.

In 2007, Asheville City Council approved a living wage for city employees of $10.86 per hour without health insurance and $9.50 per hour with health insurance. Since 2007, the Asheville/Buncombe Living Wage increased to $11.35/hour without employer provided health insurance and $9.85/hour with employer provided health insurance. The resolution under consideration reflects the current living wage for full- and part-time City employees.

On March 22, 2011, City Council adopted a purchasing and contracting policy that includes a living wage requirement for General Service contracts $30,000-$90,000. The resolution under consideration provides for the same living wage described above for these contract employees.

Based on direction given at the March 22 meeting, it is City Council's intent to annually evaluate the living wage as part of the budget process to ensure the wage stays current with inflationary indexes (such as the Consumer Price Index) and/or the most current recommendation from Just Economics. The City Council will also evaluate if the living wage provision should be extended to additional thresholds of General Services contracts.

This action is consistent with the City Council's strategic operating plan and its goal to support a standard of living that is affordable to people of all incomes, life stages and abilities.

Pros and cons are not included with this staff report since City Council has already approved the living wage policy. The adoption of this resolution formalizes City Council's previous action.

The City of Asheville currently meets the current living wage standard for full-time employees, and so no fiscal impact is expected. While the living wage provision in the General Services category may have a fiscal impact for the City, research has shown that cost implications are typically minimal and less than 1%. Staff will regularly monitor and provide quarterly updates on the impacts of the living wage provision to the City Council Finance Committee.

City staff recommends City Council adopt a resolution setting a living wage for City of Asheville full- and part-time employees and contract employees working on General Service contracts $30,000-$90,000 in value.

Director of Administrative Services Lauren Bradley responded to questions raised by Councilman Davis regarding the bidding procedure.

Vice-Mayor Newman said that as we move forward, we need to continue to seek input from people who contract and do business with the City. We want to make sure we are not creating a difficult process and or deterring people who want to do business with the City.

Councilman Bothwell moved for the adoption of Resolution No. 11-92. This motion was seconded by Councilman Smith and carried on a 5-2 vote, with Councilman Davis and Councilman Russell voting "no."

**RESOLUTION BOOK NO. 34 – PAGE 4**

**III. PRESENTATIONS & REPORTS:**

**A. RESOLUTION NO. 11-94 - RESOLUTION AUTHORIZING THE ACCEPTANCE OF A GIFT OF THE WNC VETERANS' MEMORIAL ON THE CITY-COUNTY PLAZA, AND A CONTRACT FOR THE MAINTENANCE OF THE MEMORIAL**

City Attorney Oast said that this is the consideration of a resolution authorizing the acceptance of a gift of the WNC Veterans' Memorial on the City-County Plaza, and a contract for the maintenance of the Memorial.

In connection with the redevelopment of Pack Square/City-County Plaza, the WNC Veterans' Memorial (herein "Veterans' Memorial Board"), a non-profit organization, was formed for the purpose of raising funds for a Memorial to WNC Veterans to be located and constructed in the park, and to provide for the maintenance of the Memorial.

The work of the Board has been highly successful, with the result that the Memorial has been designed, the design was approved by the City and County, its construction has been completed, and it was dedicated on Veterans Day, November 11, 2009. In addition, the Veterans' Memorial Board has raised sufficient funds to establish and fund two trusts for the perpetual care and maintenance of the Memorial.

The trusts are proposed to reside with the Community Foundation of Western North Carolina, an organization that administers charitable funds and gifts. One of the trusts, a "flexible endowment fund" is to provide for perpetual upkeep and maintenance of the Memorial and its several components, including annual cleaning. A minimum balance is required in this fund. The other fund, a "traditional endowment fund," is for the same purpose, but no minimum balance is required. The two funds together ensure that adequate funds will be available for periodic maintenance of a routine nature from year to year, and for repairs and maintenance of a more substantial nature as needed. Management of the funds, including distribution of income to the City for maintenance and upkeep, is handled by the Community Foundation, which receives a small fee for its administrative costs.

Pursuant to the agreement with the City and County, the Veterans' Memorial Board now wishes to give the Memorial to the City and the County, and to arrange for income from the trusts to be available for use by the City for the care and maintenance of the Memorial. In order for this to occur, two actions are necessary:

1. Official acceptance of the gift from the WNC Veterans' Memorial Board. A Certificate of Gift has been prepared for the Mayor's signature.

2. Agreement to a contract for the care and maintenance of the Memorial as contemplated by the trusts. This contract has been prepared for signature by the City Manager.

The Memorial is included in the plans for the Pack Square/City-County Plaza renovation.

Pros:

- Acknowledges the gift of the Memorial, and the culmination of years of work by dedicated community organization.

- Establishes a source of funds for maintaining the Memorial.

Con: None noted.

There is no impact to the City's General Fund budget since funding for maintenance will come from the outside trusts.

Adoption of the resolution is recommended.

Mr. Richard Griffin, Chairman of the WNC Veterans Memorial, was pleased to state that during Memorial Day services in Pack Square Park on May 30, 2011, the Board of Directors of the WNC Veterans Memorial will gift jointly to the City of Asheville and the County of Buncombe all ownership interest in the WNC Veterans Memorial. This ownership transfer will mark the corporate ending of the 13-year old life of the non-profit corporation that conceived, originally designed and funding construction of the WNC Veterans Memorial. In conjunction with the ownership gift, the Board will gift to the City two monetary trusts, totaling 140,000. The two trusts will be managed and controlled by the Community Foundation of Asheville. The sole purpose of the trusts is the use of annual income by the City of Asheville for the perpetual care and maintenance of the Veterans Memorial. We are pleased that the citizens and businesses of Asheville, Buncombe County and Western North Carolina, were so dedicated to the creation of the Memorial that funding for the perpetual maintenance of the Memorial is possible. He thanked everyone who contributed and asked City Council approve the contract by which the City accepts the terms of the two monetary trusts.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 11-94. This motion was seconded by Councilman Russell and carried unanimously.

Mayor Bellamy was pleased to present Mr. Griffin with the gift of pottery as a token of Asheville's appreciation. She thanked him very much for his leadership. She also presented the other Board members with a token of appreciation as well.

**RESOLUTION BOOK NO. 34 – PAGE 6**

**B. ASHEVILLE-BUNCOMBE REGIONAL SPORTS COMMISSION**

Mr. Ben VanCamp, Senior Advisor to the Asheville-Buncombe Regional Sports Commission, said that the mission of the Sports Commission is to identify and attract sports events and related meetings to enhance the health, wellness and quality of life for area residents and sports enthusiasts and to generate a positive economic impact by promoting our region as a recognized sporting destination. Their vision is to host memorable sporting events that will enrich the lives of athletes and spectators.

He explained the County-wide audit of (1) seasonality (a) availability of large blocks of hotel rooms; and (b) facility availability; (2) facilities (a) public; and (b) private; and (3) personnel. Concentrations have been (1) events have to fit our community's culture; (2) highlight our communities natural resources; and (3) events that take place in the first quarter of the year.

The strategies are to (1) work with existing events to help them grow; (2) incubate new events from within our community; and (3) recruit large events.

Funding in Year 1 was $75,000 (a) $25,000 from City of Asheville, Buncombe County and Buncombe County Tourism Development Authority (BCTDA). Proposed funding for Year 2 is $145,000 (a) $45,000 from City of Asheville, Buncombe County and BCTDA; (b) County funding has already been received; (c) BCTDA has budgeted for support, budget to be approved in June; and (d) $10,000 to be raised by Commission

Ms. Janet Cone, Board Chair, said that in November, the leadership added a Senior Advisor contract position to serve as the organization's staff. This advisor has been hard at work providing leadership to several new sporting events in our community. These events are expected to bring over 15,000 people into our community over the next 12 months, having a multi-million dollar economic impact. The Sports Commission staff works with event organizers, both locally and nationally, to showcase the Asheville community and its sport venues as the ideal location for their next event.

They (1) contact area hotels and sporting venues in Asheville on your behalf to gather information on rates and availability; (2) put together itineraries to visit venues and properties of interest so you can better make a decision; (3) compile area proposals and information for presentations to decision makers on final destination; (4) assist in event planning; (5) connect you with local service providers and media outlets; (6) provide visitor information and giveaways for athletes and fans; and (7) creative brainstorming to make sporting events in Asheville stand out above the rest.

The Sports Commission Board of Directors has prepared a preliminary budget for the 2011-12 fiscal year and is requesting $45,000 in support from the City of Asheville. This funding will provide the Sports Commission the resources it needs to hire a full-time Executive Director that will continue the work of creating, recruiting, and supporting sporting events in our community.

Councilman Davis recognized others involved with the Sports Commission noting that they have been working hard for a long time. There are a number of things that are not conventional sports that can be grown in our community. There is not an allocation for partnership in funding the Sports Commission because when the budget was being formed, they didn't know of the request. Therefore, this funding would require direction from Council. City Manager Jackson had explained that they can increase the outside agency funding by $45,000. He said that the other partners have come to the table with funding and felt it was important for the City to move forward and continue to be a partner. This is a real economic piece.

Councilman Davis moved to allocate $45,000 from the Fiscal Year 2011-12 budget to the Sports Commission, through a budget allocation, to be funded with either an increased revenue estimate or some other manner. This motion was seconded by Councilman Russell.

In response to Councilman Bothwell, Councilman Davis said that the Civic Center is having a record year now and there may be opportunities from rent and concession sales.

City Manager Jackson said that the basis of the recommendation was to provide the allocation in the outside agency funds if this is going to be a recurring expense; and, the basis to do this would be that it will increase your sales tax revenue.

Mayor Bellamy felt that it was important that these dollars stay in our community and the opportunities are huge based upon research. She asked the City Manager to place on our website the economic report for the Civic Center and how it impacts our downtown and hotels. People will be able to see what happens when we make an investment and what it brings back to our community.

When Mayor Bellamy asked for public comment, no one spoke.

Regarding process, Vice-Mayor Newman was surprised that this presentation resulted in an appropriation request. Councilman Davis apologized for the immediate request, especially since the outside agency requests have already been approved by Council; however, other partners have come to the table already and we will be adopting the budget at the next meeting. Mayor Bellamy also said that Council was scheduled to hear an update from the Sports Commission, and the budget issue was prompted by the City Manager recognizing there was nothing allocated in the budget for this. Therefore, the City Manager needed Council direction to move forward.

Vice-Mayor Newman suggested that in the future we try to follow the process of running the requests by either the Finance Committee or the Housing & Community Development Committee (that reviews all outside agency requests) so they can look at everything at once and make their decisions based on the limited funds.

When Vice-Mayor Newman asked if this is going to be a recurring request each fiscal year, Councilman Davis said that this will be recurring request, but they may not request the same amount each year.

City Manager Jackson said that the specific request is funding for one year of $45,000. He said that since the City will be contracting for services, we would want a multi-year (3-5 years) pro forma, which would include a comprehensive budget for the program.

Mr. Mark Cates was pleased that Council recognizes the limited resources available but is using those for economic development that will help our community.

The motion made by Councilman Davis and seconded by Councilman Russell carried unanimously.

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING RELATIVE TO AN AMENDMENT TO A CONDITIONAL USE PERMIT FOR CROWNE PLAZA SPORTS CENTER IMPROVEMENTS

### ORDINANCE NO. 3972 - ORDINANCE AMENDING A CONDITIONAL USE PERMIT FOR CROWNE PLAZA SPORTS CENTER IMPROVEMENTS

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:00 p.m.

Urban Planner Jessica Bernstein said that this is the consideration an amendment to the conditional use permit for Crowne Plaza Sports Center Improvements, located at 1 Resort Drive, for the additional of a zip line with towers, 82 parking spaces, and an additional 100 future parking spaces. This public hearing was advertised on April 29 and May 6, 2011 (City Exhibits 1 and 2).

Ms. Bernstein said that the applicant is requesting to add new uses to an existing site. This project is considered as an amendment to the previous Conditional Use Permit (Ordinance No. 3707).

The project site consists of a 108.45 acre parcel located off of Resort Drive (accessed from Patton Avenue/I-240) and is zoned Resort District. Surrounding properties are zoned Resort, Regional Business, RM-8, RS-2, RS-8, CBI, and CBII. This site is currently the location of the Crowne Plaza Resort (City Exhibit 3).

The phased master development plan approved by City Council in 2009 proposed three phases: Phase 1 included tennis courts, an indoor soccer building and an indoor pool/fitness center with associated parking. Phase 2 would include a mixed-use building and parking. Phase 3 proposed a hotel/condo building. After Council approval, the applicant eliminated the Phase 2 mixed-use building, and the hotel/condo became the new second and final phase. All development in the 2009 approval was to be located towards the main entrance to the site, in the southeast end of the large parcel.

New uses proposed include an 82-space parking lot and a zip line adventure course, as well as future expansion for 100 additional parking spaces. The project site for the proposed amendment is on the southwestern end of the resort – west of the recently constructed expo center and on the southern boundary of the golf course.

Landscaping will be required in the parking areas, including a street buffer and interior vehicular use area trees and shrubs.

This project was approved with conditions by the Technical Review Committee (TRC) on March 21, 2011. Adjacent neighbors were present at the meeting to learn more detail about the proposed zip line; however, no one expressed opposition to the project. As an amendment to a previously approved Conditional Use Permit, review by the Planning & Zoning Commission is not required.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   *The project will meet State building code requirements and will be reviewed in detail by the Technical Review Committee to ensure compliance with safety requirements.*

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   *The proposed zip line has minimal disturbance due to the small tower footprint and the use maximizes the benefits from slopes and views in its recreational purpose. The*

*proposed parking areas are on existing flat areas with no significant natural or topographic features due to the previous development of the golf course. Appropriate landscaping will be provided to minimize visual impact.*

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   *The parcel containing the Crowne Plaza Resort is quite large (over 108 acres) and while the new proposed uses are closer to the adjacent neighborhood than the previously approved phases, the uses are minimally invasive, complementary to the existing uses on the site and should not impact the value of adjoining or abutting property. The zip line towers will not be lit and are more than 400 linear feet from the nearest house.*

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   *Although these uses are situated on the western side of the property, which is closest to the nearby residential neighborhood, the new uses are complementary to the other resort buildings and amenities on this parcel. The zip line and parking areas should have a minimal visual impact to the neighborhood and are in harmony with the character of the resort area.*

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   *This proposal aligns with Smart Growth Land Use Policies in the 2025 Plan by including mixed-use development with hotel, recreational and residential components on a site with existing infrastructure, close to transportation and the downtown (pg. 31). Also, the tourism industry is highlighted in the Plan as needing to concentrate on "creating and marketing 'destination' travel opportunities to attract travelers" (pg. 195). Expanding and enhancing the amenities of this centrally located resort will no doubt have a positive draw to visitors.*

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   *This site is located just off I-240/Patton Avenue, which places the project in an easily accessible location by car and Asheville transit (rt. 15). The project has been reviewed by the Technical Review Committee and has been found to have adequate access to infrastructure.*

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   *There is no traffic congestion or traffic hazard anticipated as a part of this proposal.*

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:
- The proposal is aligned with City goals relating to economic development (tourism).
- New parking areas will support existing resort uses, including recent expo center.

Con:
- None noted.

Staff recommends approval of this amendment to the previously approved Conditional Use Permit, adding new uses to the Crowne Plaza Resort site.

Mr. Tom Wilson, representing Hulsing Hotels, briefly summarized the project and urged Council for their support.

Mr. Jeff Greiner, Owner and President of Adventure America Zip Line Canopy Tours, explained what the course would consist of and how it is a family oriented activity. He was excited to bring this activity to Asheville.

Mayor Bellamy closed the public hearing at 6:06 p.m.

In response to Councilwoman Manheimer, Mr. Mark Wells, representative of Hulsing Hotels, said that there will still be 9 holes on the golf course.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3972, to adopt an amendment to the conditional use permit for Crowne Plaza Sports Center Improvements, located at 1 Resort Drive, for adding a new zip line and parking areas, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilwoman Manheimer and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 23**

**B. PUBLIC HEARING TO CONSIDER REZONING PROPERTIES ON CALEDONIA ROAD AND FINALEE STREET FROM INSTITUTIONAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

**ORDINANCE TO REZONE PROPERTIES ON CALEDONIA ROAD AND FINALEE STREET FROM INSTITUTIONAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT**

**ORDINANCE TO REZONE PROPERTIES ON CALEDONIA ROAD AND FINALEE STREET FROM INSTITUTIONAL DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

Councilman Russell moved to recuse Councilwoman Manheimer from participating in these actions due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously. At this time, Councilwoman Manheimer left the Council Chamber.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezonings of the property. Since Councilwoman Manheimer has been recused, there must be 5 out of 6 Council members to vote in favor of the rezonings in order for them to pass.

Mayor Bellamy opened the public hearing at 6:09 p.m.

**RM-16 Residential Multi-Family High Density District**

Planning & Development Director Judy Daniel said that this is the consideration of an ordinance to rezone properties located on Caledonia Road and Finalee Avenue from Institutional District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on April 29 and May 6, 2011.

Ms. Daniel said that the primary intent of the staff proposal is the rezoning of the properties owned by Caledonia LLC and Kenilworth Inn, LLC from Institutional (a residual zoning left over from a prior institutional use on part of this property) to RM-16, reflecting the existing use of this property in this residential neighborhood, in accordance with Section 7-7-2 of the UDO, Initiation of Amendments.

The primarily affected properties include all of two parcels and portions of another parcel totaling approximately 9.57 acres located on Caledonia Road at Finalee Road. One parcel (2062) is developed and contains the primary structure of the multi-family residential Kenilworth Inn Apartments. The two other undeveloped parcels (4812 and a portion of 6180) adjoin the Inn and are located on the north and east side of Caledonia Road. These properties have had Institutional zoning for many years, since a health facility was previously located in the existing structure. This historic structure was built as an inn in 1918, restored and is in current use as multi-family rental housing. Interim uses (including a mental health hospital) were institutional in nature and the properties were rezoned to Office-Institutional in 1980, which became Institutional upon the adoption of the UDO in 1997.

Adjacent parcels to the north, east, and west are primarily zoned RS-8, in a predominantly single-family neighborhood. One adjoining property to the north (PIN 2461) adjoining the Kenilworth Inn contains two buildings with garages/ storage areas for use by its residents; conditionally rezoned to Institutional in 2004 to allow for the stand alone garages. This property is proposed to remain in CZ Institutional zoning, as it is subject to important limiting conditions under the Conditional Zoning. The properties to the south, formerly a part this property before a recently approved subdivision are vacant, wooded, and steeply sloped. They are the subject of a staff initiated rezoning as well.

Since the Planning and Zoning hearing, the staff realized that this rezoning was also advertised to include a very small portion (.16 acre of a .34 acre) of another property (7364) with different and unrelated ownership which is developed with a single-family residence and is currently split zoned between RS-8 and Institutional. We believe the existing Institutional zoning on that property may be the result of a mapping error. The actual staff intent was to rezone this property fully into RS-8, not RM-16, but there was a mistake in the advertisement.

The Planning and Zoning Commission reviewed this request at their April 6, 2011, meeting. After hearing a number of comments in support of the request, the Commission voted unanimously (6:0) to recommend support of the rezoning to the Council. There were no speakers in opposition to this request, although the affected property owner has filed a protest petition in opposition to the proposed rezoning.

There were two primary reasons stated for their support of the request. The Commission agreed that the Institutional zoning should be modified as there are uses allowed in that district that could be incompatible in this residential area. The Commission also specifically noted that the proposed zoning did not change the development potential for the site for multi-family housing; and they felt the existing density allowed is appropriate at this location.

There was no discussion of the property mistakenly advertised for rezoning to RM16.

Pro:

- The rezoning establishes zoning on the properties that is more reflective of and compatible with the existing use of the property.

Con:

- The staff can identify no concerns with this rezoning as the existing use will be wholly compatible with the multi-family use and density of the existing structure on the property which will remain wholly conforming with the zoning.

Staff recommends approval of the rezoning to RM-16 for all recommended parcels which will establish a zoning district that reflects the actual use of the existing structure at its current density of use.

Rezoning to RM-16 for parcel 7364 is also recommended in order to avoid leaving a small residual piece of Institutional zoning at this location. The difference between the advertised RM-16 and the intended RS-8 is too great to allow a zoning change to RS-8 at this time, even if desired. The staff may return later with a corrective zoning recommendation for this small (.16) acre zoning change.

**RS-8 Residential Single-Family High Density District**

Ms. Daniel said that this is the consideration of an ordinance to rezone properties located on Caledonia Road and Finalee Avenue from Institutional District to RS-8 Residential Single-Family High Density District. This public hearing was advertised on April 29 and May 6, 2011.

Ms. Daniel said that the primary intent of the proposed staff initiated proposal is the rezoning of the properties owned by Caledonia, LLC from Institutional (a residual zoning left over from a prior institutional use on portion of this property that has subsequently been subdivided) to RS-8. The changed zoning reflects a density more appropriate for these steeply sloped properties in a predominately single-family residential neighborhood, and eliminates the potential for certain commercial uses (allowed in the Institution district) that are unlikely to be compatible at this location. The proposed rezonings initiated by staff are in accordance with Section 7-7-of the UDO, Initiation of Amendments.

The rezoning was also intended to affect a small piece of adjoining property (.16 acre of a .34 acre property) under different and unrelated ownership to RS-8 that is currently split-zoned between RS-8 and Institutional. The existing Institutional zoning on that property may be the result of a mapping error, and the intent was to rezone it fully into RS-8. Unfortunately, the advertisement for this rezoning mistakenly noted it for rezoning to RM-16 as discussed earlier in the RM-16 Density portion of this staff report.

The properties affected by the rezoning consist of all of one parcel and portions of two parcels owned by Caledonia, LLC; located along the east and south side of Caledonia Road from its split with Pickwick Road to its intersection with Finalee Avenue with an area of approximately 12.33 cumulative acres. Adjacent parcels to the east and west are currently zoned RS-8, in a predominantly single-family neighborhood. Adjacent parcels to the north are currently zoned Institutional and contain a structure in current use as multi-family rental housing, and also the subject of a current staff initiated rezoning from Institutional to RM-16. The Silverman property to the south fronts on Swannanoa River Road and, as noted above, is zoned Urban Place although it is vacant and without current activity on the site. Other properties to the south are zoned River and are in commercial uses.

This majority of this area was the subject of a recent Conditional Zoning proposal consisting of one large multi-family structure of 100 dwelling units. It was found to be incompatible with the surrounding neighborhood by the City Council in September of 2010. Reasons noted for the incompatibility related to the intensity of the proposed use in relationship to the steep slopes and narrow winding character of Caledonia Road. A somewhat different proposal was then proposed by the owner, consisting of two separate multi-family structures of 50 dwelling units each. The reasons stated for Council disapproval of the original project remained - the nature of the slopes and the road.

In response to general concerns expressed about the City's regulatory processes the staff initiated proposals to modify the Unified Development Ordinance (UDO) processes for development review. Those changes were subsequently adopted by the Council. With the adoption of those changes, the development proposals in process (given conditional approval by the Technical Review Committee but with no permits issued) became void. With that voiding, the staff initiated the rezoning action on these properties.

Staff believes that RS-8 zoning is more appropriate for these heavily wooded, steeply sloping properties that take access from a section of Caledonia Road that is very narrow, steep, and winding. That zoning would allow a level of development appropriate for properties of that nature, more compatible with the RE-8 zoning on adjoining properties that share that level of topographical constraint. That zoning would also provide a level of "buffering" for the historic Kenilworth neighborhood from the substantially more intense development that is likely to occur over time along Swannanoa River Road.

While the owner of this property will suffer some loss of development potential, the RS-8 is the most intense level of single-family zoning offering the potential for lower intensity multi-family development should he choose to pursue it - including duplexes, triplexes, quadraplexes (as conditional uses) and cottage developments (as a USSR use).

The Planning and Zoning Commission reviewed the proposed rezoning at its' April 6, 2011, meeting. There were many comments from the public, primarily in support of the proposed rezoning and primarily from residents of the Kenilworth neighborhood. They expressed support for the reasons noted in the staff report. Concern was expressed, however, that the rezoning did not include the entire portion of the property with PIN 6180. The advertised rezoning to RS-8 included only the portion on the east side of Caledonia Road. They felt the residual portion of the parcel along the west side of Caledonia Road, should also be included as it reflects the same density and access concerns they have expressed for these properties since the first application in the fall of 2010.

There were two comments strongly condemning the proposed rezoning. The first came from an attorney representing the affected property owner, who has filed a protest petition against the rezoning. He stated strong objections to the proposed rezoning and to the legality of the City to consider a rezoning on the property without protecting existing rights of the property owner. The second came from the representative of the Council of Independent Business Owners, who expressed the same strong objections noted previously by the attorney of the property owner.

After considerable discussion the Commission voted unanimously (6:0) to not recommend support of the proposed rezoning to RS-8. The primary reason stated for their decision to not support the request related to the proposed change of density on the property, and how that would impact the property owner. The Commission agreed that it would be logical to modify the current Institutional zoning, as there are certain commercial uses allowed in that district that could be incompatible in this residential area. They expressed support, however, for the currently allowed density at this location - especially taking into account recent actions and proposals on this site. The Commission went on to further discuss appropriate zoning and generally seemed to support change to a zoning with density similar to what currently exists

although they took no official action. The Commission suggested that the Council consider the RM-16 zoning for this site, as is proposed for the adjoining property.

Pro:

- The rezoning establishes zoning on the properties that is more reflective of and compatible with the surrounding single-family neighborhood, the steeply sloping site, and the limited access.

Con:

- The rezoning will require substantial modification of uses planned by the owner of the property under the current zoning.

Staff recommends approval of the rezoning to RS-8 for the recommended parcels which will establish a zoning district that is more appropriate for the site given the nature of the surrounding neighborhood combined with the nature of the access road and the slope of the properties.

Mr. Thom Holman, representing Caledonia LLC and Kenilworth Apartments LLC, objected to any changes of the Institutional zoning. He explained in detail why he objected on the grounds that these proposed rezonings are inconsistent with the long history at this location, they are unlawful, inappropriate, unfair, violates due process rights of the property owner, are arbitrary and capricious, will cause substantial monetary damage to the owners of the property, sends the wrong message to both developers and property owners, and weakens the Comprehensive Plan. He urged the Council to deny the rezoning of these properties as he felt they are inappropriate and should be rejected.

Mr. Paul Smith was concerned that this gives the appearance to a developer that even though he starts a project, the City can change the zoning.

The following individuals spoke in support of rezoning the properties per staff's recommendation from Institutional to RM-16 and RS-8 respectively, mainly due to the residential nature of the area and the steep slope:

Ms. Valerie Hoh, adjoining property owner
Ms. Barber Melton, Vice-President of the Coalition of Asheville Neighborhoods
Mr. Joe Hoffman, area property owner
Ms. Mary Evers, resident on Finalee Avenue
Ms. Tracy Stubbing, resident on Finalee Avenue
Mr. Chris Pelly, President of the Haw Creek Community Association
Mr. Terry Meek, resident on Pickwick Road (also requested PIN 6180 not be rezoned to RM-16 District, but to either RS-8 or RM-8)
Ms. Patsy Brison, representing Kenilworth Residents Association (any reference to any maps staff uses or the neighborhood pointing to them does not mean they are waiving their challenges to the subdivision approval by the City; and challenged the validity of the protest petition based on timing)
Mr. Robert Zieber, Asheville resident (suggested a bond for projects if the developer goes bankrupt before the project is complete)

Mayor Bellamy closed the public hearing at 6:59 p.m.

In response to Vice-Mayor Newman, City Attorney Oast said that it is unusual to get a protest petition in before the Planning & Zoning Commission meeting, but that doesn't mean it's not valid.

In response to Vice-Mayor Newman, Ms. Daniel said that staff did not have an objection of rezoning PIN 6180 to RM-8; however, staff's recommendation stands at RM-16. She also noted that there may be a problem with the RM-8 designation due to a spot zoning issue and staff would need to consult with the City Attorney on that issue.

In response to Vice-Mayor Newman, City Attorney Oast said that the process would need to be started over (through the Planning & Zoning Commission) if Council considers any different zoning designation other than what has been advertised.

Mayor Bellamy said that members of Council have previously received copies of the ordinances and they would not be read.

Vice-Mayor Newman moved tor rezone properties located on Caledonia Road and Finalee Avenue (per staff's recommendation) from Institutional District to RS-8 Residential Single-Family High Density District. This motion was seconded by Councilman Bothwell.

Vice-Mayor Newman felt the zoning classification is well justified and consistent with the City's Comprehensive Plan as well as the character of the neighborhood.

Councilman Russell could not support either of the requested rezonings as he felt this is a major property rights issue.

Councilman Smith hoped that staff will continue to identify areas that have incompatible zoning. He would support the motions due to density and uses allowed.

Councilman Davis felt this does amount to a property rights issue and in reality we are changing the rules in the middle of the game.

Councilman Bothwell was disappointed in the way Councilwoman Manheimer ultimately had to recuse herself due to a conflict of interest. He would support the motion.

Mayor Bellamy noted the first question to Council was what would they initially zone the property, noting there is an Urban Place District and a River District adjacent to the properties. She didn't think Council would have made that leap from those two districts to RS-8. Her experience is when there is a high density usage, staff transitions it to a medium density district toward the neighborhood. She felt RM-16 would be a better recommendation than RS-8 for the lower parts of the property. She hoped that the developer would work with the neighborhood as they seem to be open to residential uses on the property.

The motion made by Vice-Mayor Newman and seconded by Councilman Bothwell failed on a 3-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Russell voting "no" (Councilwoman Manheimer was recused).

Councilman Bothwell moved to rezone properties located on Caledonia Road and Finalee Avenue (per staff's recommendation) from Institutional District to RM-16 Residential Multi-Family High Density District. This motion was seconded by Councilman Smith and failed on a 4-2 vote, with Councilman Davis and Councilman Russell voting "no" (Councilwoman Manheimer was recused).

At this time, Councilwoman Manheimer re-entered and participated in the remainder of the meeting.

**Closed Session**

At 7:17 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4); (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: Cherie Byrd; City of Asheville; Asheville Police Department; and Eric Lauffer. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 8:02 p.m., Councilman Russell moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

**C. PUBLIC HEARING ON THE FISCAL YEAR 2011-12 ANNUAL OPERATING BUDGET**

Director of Administrative Services Lauren Bradley said that the City Council conducts a public hearing each year to receive public input on budget issues before the Annual Operating Budget is adopted.

The Fiscal 2011/2012 Proposed Annual Operating Budget was presented to City Council on April 26, 2011. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Proposed Budget along with a notice of the Public Hearing was published on April 29 and May 6, 2011. Adoption of the Fiscal 2011/2012 Budget Ordinance is scheduled for May 24, 2011, at the regularly scheduled City Council meeting.

The Fiscal Year 2011/2012 Proposed Budget is balanced with an Ad Valorem tax rate of $0.42 per $100 of assessed value, which represents no change from the current year tax rate. All essential City services are continued in the Proposed Budget. A copy of the Proposed Budget is available for public inspection in the City Clerk's office. Also, the Proposed Budget is available for viewing on the City's website (www.ashevillenc.gov). In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the Proposed Budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption, with the only exception being the Ad Valorem Tax rate, which can not be changed once the Budget is adopted.

Staff recommends City Council conduct the public hearing on the City of Asheville Fiscal Year 2011/2012 Proposed Annual Operating Budget and include public input in its consideration of the Budget.

City Manager was pleased to introduce Capt. Wade Wood, who will be Interim Police Chief effective May 12, 2011. Capt. Wood looked forward to serving the community and to move the Police Department forward.

Mayor Bellamy opened the public hearing at 8:07 p.m., and when no one spoke, she closed the hearing at 8:07 p.m.

Councilman Russell commended Council and staff on the numerous open worksessions and open meetings that have gone on to culminate in this public hearing.

Mayor Bellamy announced that adoption of the budget will occur on the May 24, 2011, meeting.

**V. UNFINISHED BUSINESS:**

**A. ORDINANCE NO. 3973 - ORDINANCE AMENDING THE FEES & CHARGES MANUAL TO INCREASE THE RECYCLING FEE**

Public Works Director Cathy Ball said that this is the consideration of an ordinance amending the Fees & Charges Manual to increase the recycling fee.

At the April 12, 2011, City Council meeting, staff recommended an increase in the recycling fee of $0.65 per month or $7.80 per year. The current fee is $2.95 per month. Staff proposed that the additional fee would cover the following:

- Allowing, but not requiring, residents to select a larger (95 gallon) recycling container; and,
- Providing a marketing and rewards program, such as Recyclebank, for residents who participate in the recycling program.

Currently, residents can put all of their recyclables in one container. This process is known as "single stream recycling". Additionally the City is working with our vendor to add materials like yogurt containers to the accepted materials list. Neither of these two enhancements requires a fee increase.

Council requested additional information regarding the options of offering residents a 95 gallon recycling container and/or a rewards program. Staff evaluated these two options separately and determined the cost for the programs shown in the table below.

| Option | Description | Cost Increase per year | City Savings per year | Net per year | Rate Increase per month | Rate Increase per year |
|---|---|---|---|---|---|---|
| 1 | 95 gallon container | $220 K | $105 K | ($115 K) | $0.35 | $4.20 |
| 2 | 95 gallon container + Recycling rewards program | $343 K | $130 K | ($213 K) | $0.65 | $7.80 |

The recycling rewards program currently being evaluated by the City is Recyclebank. Based on Recyclebanks evaluation of Asheville, residents who participate in the recycling program could be eligible for a discount on local and national business in the amount of $90 to $130 per year.

In April 2007, Asheville City Council passed a resolution committing to reduce the municipal carbon footprint 80% by the year 2050. To lead this strategic effort, Asheville developed a Sustainability Management Plan that was adopted by City Council. Solid waste was included as a focus area in the plan, along with a series of programmatic recommendations to reduce waste generation in Asheville in its FY 2010-11 strategic plan, Council specifically identified the reduction of solid waste as a top priority.

At the April 20, 2011, SACEE recommended approval of the 95 gallon containers with the recycling rewards program or Option 2 above.

If approved, staff would need six months before full implementation could take place. During those six months, the City would procure bins and all necessary equipment, finalize changes to the existing recycling contract and implement a community education initiative.

This action complies with City Council's Strategic Operating Plan under the Green and Sustainable Goal. Asheville will be the southeastern leader in clean energy and environmental sustainability by expanding community education programs and implementing ways to reduce city-wide solid waste.

Pros:

- Reduction of land filled solid waste
- Increased awareness of recycled material for residents
- Supports Council's sustainability goals

Cons:

- Cost per month per household will increase if either of the options is selected.

The incremental increase is outlined in the table above.

Ms. Ball clarified some points explaining what the changes are in the recycling and what the changes are in the amount of trash collected from the current and pilot program.

Staff recommends City Council amend the Fees and Charges Manual to increase the fee to provide for 95 gallon recycling carts and a recycling rewards program ($0.65 increase from $2.95 to $3.60 per month). However, staff is also supportive of the $0.35 increase from $2.95 to $3.30 per month (95-gallon container without recycling rewards program).

Ms. Ball responded to Councilman Bothwell regarding the basis of the recycling increase up 2% over time.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilwoman Manheimer moved for the adoption of Ordinance No. 3973 to amend the Fees & Charge Manual to increase the recycling fee from $0.35 to $3.60 per month (95-gallong container and recycling rewards program). This motion was seconded by Councilman Bothwell.

Councilwoman Manheimer felt there will be increased recycling with a recycling program in place.

When Mayor Bellamy asked for public comment, no one spoke.

In response to Councilman Davis, Ms. Ball said that this action does not commit the City to enter into a contract with Recyclebank. Provisions, including the term of the contract, for a reward program is still negotiable. Staff will come back to Council for authority to enter into a contract for a rewards program and also to amend the contract with our current recycling vendor. This action allows staff to have the funding available to start negotiating the terms of those contracts.

Councilman Davis didn't want to see the City commit to a long-term contract in that he was skeptical about the future use of coupons. However, he did support the increase of recycling.

Vice-Mayor Newman felt this is an innovative idea and compelling enough to give it a try. He wanted the negotiations to include strong performance criteria that if the program is not working then the City can get out of the contract sooner than later.

Councilman Smith was pleased that 80% of our residents already recycle (87% projection with the pilot program), so he was skeptical whether Recyclebank will be able to get us a lot further than that. However, he was not inclined not to support the Recyclebank portion because Asheville is already doing such a good job of recycling. As to marketing, we can be good if we try. He will support the motion; however, when the contract comes back he wanted to see some stellar projections and performance goals.

Councilwoman Manheimer hoped that in the future we could offer smaller trash cans for a decreased amount to incentivize people to recycle and a composting program.

In response to Vice-Mayor Newman, Ms. Ball said that does not recommend that this fee be effective immediately. It gives us the ability to start negotiations. If we do enter into an agreement with a rewards program, then we would look for the fee to start September 1, 2011. If we go with just the 95-gallon containers, we would look at an effective date of October 1, 2011.

Councilman Davis asked for a friendly amendment that we proceed with Option 1 (95-gallon container only – increase from $2.95 to $3.30) and look at the more fully vetted opportunities that the recycling rewards program can offer.

Councilwoman Manheimer suggested the friendly amendment be that Council approve Option 2 (95-gallon container with a recycling rewards program) conditioned upon approving a contract, but at the very least agree to Option 1. Councilman Bothwell agreed to the friendly amendment as described by Councilwoman Manheimer.

The amended motion made by Councilwoman Manheimer and seconded by Councilman Bothwell carried on a 6-1 vote, with Mayor Bellamy voting "no."

**ORDINANCE BOOK NO. 27 – PAGE 28**

**B. RESOLUTION NO. 11-95 - RESOLUTION ACCEPTING THE REPORT PREPARED FOR THE SWANNANOA FLOOD RISK MANAGEMENT PROJECT**

Stormwater Services Manager McCray Coates said that this is the consideration of a resolution accepting the report prepared for the Swannanoa Flood Risk Management Project.

The Hurricane Recovery Act of 2005 (Senate Bill 7) allocated funds for planning and implementation of projects to aid in flood damage reduction for North Carolina communities hardest hit by the 2004 hurricane season. The Biltmore Village area of the City of Asheville (within the Swannanoa River watershed) was named as a recipient of this funding. From December 2005 through August 2006 a planning study was conducted to identify and prioritize flood damage reduction projects for implementation in the community. This planning study was conducted by the N.C. Dept. of Environment and Natural Resources Division of Water Resources (DWR) and stakeholders from the Biltmore Village, City of Asheville and the Swannanoa watershed, with the assistance of a project consultant.

In September 2006, expenditure of funding for implementation of this Plan was reviewed without objections by the NC Government Operations Committee. This approval led to Council approval of a contract with Brown and Caldwell consulting engineers to oversee the Swannanoa Flood Risk Management Project and coordinate with the Army Corps of Engineers.

The purpose of the project was to identify additional the most cost effective measures to reduce the risk of flooding in the Swannanoa River watershed. The Feasibility Report is a decision document which considered the watershed modeling and economic analysis in identifying and prioritizing alternative measures.

Mr. Marshall Taylor, representing Brown and Caldwell, mentioned the following key objectives of the plan (1) to inventory the property within the floodplain and establish the relationship between severity of flooding and economic damages; (2) to develop realistic scenarios of future watershed and floodplain conditions; (3) to identify and evaluate projects that will reduce the risk of flooding to human life and property; and (4) to involve the public in every step of the project. If all the recommended project components are implemented at an estimated design and construction cost of $7.6 Million, an estimated $80 Million of flood damage reductions will occur over the next 50 years.

Within the scope of the project, over 50 potential flood reduction projects were identified and analyzed. From these analyses, a recommended plan was developed which calls for additional flood mitigation efforts to be implemented starting in 2011. The core of the recommended plan is the construction of three projects:

1. Rehabilitation and modification of Lake Craig Dam at Azalea Park;
2. Improvements to the rivers approach and exit from the Biltmore Avenue Bridge; and
3. Adoption of a Flood Operation Plan for the City of Asheville's Bee Tree Reservoir.

There are additional components of the recommended plan, including audible flood warning devices at key locations in the watershed and rehabilitation of Lake Tomahawk Dam. Council was provided with an executive summary of the Swannanoa Flood Risk Management Report.

He stated that the conclusions consist of: (1) the recommended plan reduces but does not eliminate the flood risk to human life and property. Flooding will continue to be a problem in the Swannanoa Valley and in Biltmore Village even after the plan is implemented; (2) it will take a great deal of cooperation and perseverance among the Swannanoa Valley communities to implement the recommended plan; and (3) continued community involvement is essential as the U.S. Army Corps of Engineers continues with planning, design, and implementation.

This action complies with the City's plans and commitments to administer $2.5M of Senate Bill 7 funding consistent with a contract executed with the North Carolina Division of Water Resources on April 1, 2007. In addition, this project has complied with the Council's Strategic to provide a safe community for our citizens.

Pros:

- Approval of the report creates a strategic plan for future regional cooperation on priority projects.
- Priorities are set for expending the remainder of state flood mitigation funding and for pursuing future state and federal grant funding.

Cons:

- None identified.

This project has been funded by the State in compliance with the Hurricane Recovery Act of 2005. There is currently additional Senate Bill 7 funding available to move forward with top priority project in the report, the proposed Lake Craig project. City staff is working with the Army Corps of Engineers as well as the North Carolina Division of Water Resources to identify future funding for other projects recommended in this report. These sources would require matching

contributions from the City in order to secure these funds.

City staff recommends City Council adopt a resolution to accept the Swannanoa Flood Risk Management Project report as recommended by Brown and Caldwell.

Ms. Mary Leonard White, Chair of the Flood Damage Reduction Task Force, felt the study was thorough and thoughtful giving recommendations and options. She hoped Council will now feel prepared to make some difficult decisions and will move on some of the recommendations.

Mayor Bellamy thanked Ms. White and the entire Task Force for their hard work on this effort.

Mr. Taylor responded to some questions raised by Councilman Bothwell regarding impervious and pervious parking areas.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 11-95. This motion was seconded by Councilman Russell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 7**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 11-97 – RESOLUTION AUTHORIZING REVISIONS TO THE CITY'S CONSOLIDATED ANNUAL ACTION PLANS FOR 2011-12**

Community Development Director Jeff Staudinger said that the withdrawal of a funding request by an organization allocated HOME funds in this year's Action Plan creates an opportunity to provide additional support to the Eagle Market Place development.

On April 26, 2011, the Asheville City Council approved the Annual Action plan for CDBG and HOME Funds for 2011-2012. Included in that plan was funding of $102,900 for the Gardens at English Village Elder Housing Development, a project of the Western Carolina Community Action (WCCA) to be located in Brevard.

WCCA has now withdrawn their request for HOME funding. The project was withdrawn because a private-sector tax-credit development proposed in Brevard received a significantly higher site score in the pre-application process. WCCA recognized that it was imprudent to continue to allocate resources to a project for which further funding this year was extremely unlikely.

WCCA also informed staff that a rental development project funded in the 2009 Action Plan for the Town of Rosman will not be able to move forward. $95,000 of HOME funds allocated to this project is now available for reallocation.

In total, therefore, $197,200 in HOME funds is available for reallocation. Reallocation of $100,000 of these funds to the Eagle Market Place development could yield the project an additionally two points, enhancing its competitiveness and strengthening its financial position. The current allocation to the project is $362,800. The developers, Mountain Housing Opportunities and Eagle Market Streets Development Corporation, have a final application deadline of May 13 for their tax credit and loan financing proposal to the North Carolina Housing Finance Agency.

Staff recommends the Council support the additional allocation of $100,000 of HOME funds to the Eagle Market Place development, for a total HOME allocation to the project of $462,800.

The Regional Housing Consortium was polled and there was a consensus to agree to this allocation, with the knowledge and consent that they would confirm this at their next meeting. They would also consider the allocation of the additional funds, most probably to projects happening outside of Asheville and Buncombe County.

When Mayor Bellamy asked for public comment, no one spoke.

Ms. Cindy Weeks, representing Mountain Housing Opportunities, was pleased to report that their Glen Rock project won the Sustainable Project of the Year award for the entire southeast by the Community Affordable Housing Equity Corporation. She thanked City Council for their support of the Eagle Market Place project.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 11-97. This motion was seconded by Councilman Russell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 9**

**B. RESOLUTION NO. 11-96 - RESOLUTION TO EXPLORE A MORE REGIONAL AND INTEGRATED TRANSIT SYSTEM**

Director of Transportation Ken Putnam said that this is the consideration of a resolution to explore a more regional and integrated transit system, as recommended by the Transit Commission after review of the Asheville-Buncombe-Henderson Regional Feasibility Study.

During November 2009, the N.C. Dept. of Transportation Public Transit Division contracted with HDR Engineering of the Carolinas and its partners to conduct a Regional Feasibility Study for public transportation in the City of Asheville, Buncombe County, and Henderson County.

The purpose of the subject study was to conduct an organizational review of the transit systems currently operating in Buncombe and Henderson Counties to determine the feasibility of establishing a closer working relationship. The work of the study was guided by a steering committee comprised of representatives from the major stakeholders.

HDR Engineering of the Carolinas presented the final report to City Council on September 28, 2010, and at that meeting, City Council, by common consent, received the report and requested the Transit Commission to review it and provide recommendations back to City Council for possible action.

The Transit Commission began the review process during their October 2010 meeting by receiving copies of the report and developing an action plan. After each of the members had time to review the report individually, they discussed it in detail during their January and February 2011 meetings. The following concerns and/or issues were identified:

- NCDOT prepared a study that was not requested locally and with no apparent political will to implement.
- The report seems to serve only NCDOT's interests.
- NCDOT has their own motivations for the report (they want to see a consolidated service).

- Although there might be a need for a report about consolidating services, this report is not the one.
- The report calls for additional services but does not include or ensure any new funding to implement it.
- Buncombe and Henderson Counties will never agree to anything that gives Asheville control, and Asheville is concerned about losing control of its system.
- The Asheville/Buncombe/Henderson systems are very different.
- How would the consolidation benefit the Asheville rider?
- NCDOT is asking too much for the local governments to agree with what is included in the report and to move ahead with it – this feels like a forced partnership.
- The Transit Master Plan is not adequately included or addressed.
- Asheville and Buncombe County are already working toward several things listed in the report to improve coordination – why force the issue through this report?
- The time table is too aggressive.

Despite the subject concerns and/or issues, there was overall agreement from the commission members that:

- Everyone could benefit from a truly regional transit system that includes other counties and other forms of transit like express buses. Several regional plans call for such a system.
- Land of Sky Regional Council and the French Broad River MPO could and should play a leading role in creating and funding a more regional system.
- Asheville and the public could benefit from a more seamless transit system that provides better service and connectivity.
- While another report might be better, there is not funding for it and it would be years before it could happen; meanwhile, we could be building toward a regional system.
- The informal ongoing work with Buncombe County to improve coordination could be more formalized.

After much discussion, the Transit Commission approved a resolution recommending using the regional feasibility report as an opportunity to call for a more regional system and to call on Land of Sky and the MPO to play a leading role in the planning and funding of such a system. The Transit Commission also recommends that City Council direct staff to work more intentionally with Buncombe County to implement common sense recommendations from the subject report in an effort to better coordinate Asheville Transit System and Mountain Mobility.

This action complies with the City Council Strategic Operating Plan in the fiscal responsibility focus area, the green and sustainable focus area, and the job growth and community development focus area by leveraging funding from the State and other funding sources for regional transportation improvements, operating the City of Asheville to the highest levels of fiscal responsibility, and creating partnerships between the City of Asheville and other organizations.

Pros:

- Explores options to provide a regional service and establishing a closer working relationship with Buncombe County.
- Might be an avenue to potentially increase transit-related revenue in order to create a more stable transit fund revenue source.

Con:

- None

There is no immediate fiscal impact regarding the recommended action.

The Transit Commission and City staff recommends City Council to adopt a resolution in favor of exploring a more regional and integrated transit system for the residents of Asheville and Buncombe County.

Councilman Smith, liaison to the Transit Commission, spoke in support of the resolution.

When Mayor Bellamy voiced concerns regarding the wording of the proposed resolution in that she felt the discussions with Land of Sky, Buncombe County and the Metropolitan Planning Organization should occur first before we ask for funds to be used to make this happen.

Councilman Smith moved to amend the proposed resolution addressing Mayor Bellamy's concerns (deletion of all but the first three "Whereas"s). This motion was seconded by Councilman Bothwell.

Ms. Julie Mayfield, Vice-Chair of the Transit Commission, explained why the wording in the proposed resolution read the way it did and hoped City Council would adopt a resolution to explore a more regional and integrated transit system.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

The motion made by Councilman Smith and seconded by Councilman Bothwell carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 8**

**C. BOARDS & COMMISSIONS**

Regarding the Asheville-Buncombe Fair Housing Commission vacancies, at the recommendation of the Boards & Commissions Committee, it was the consensus of Council to postpone action on these seats for six months.

**RESOLUTION NO. 11-98 - RESOLUTION APPOINTING MEMBERS TO THE CIVIL SERVICE BOARD**

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that the terms of Larry Harris and Jacquelyn Harris, as members on the Civil Service Board, expire on May 21, 2001.

The following individuals applied for vacancies on the Civil Service Board: Daniel Bradshaw, Flora Marr, Fred Cooke, Colleen Cody and Elizabeth Lynne Pou.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended reappointing Larry Harris and Jacquelyn Hallum.

Councilwoman Manheimer disclosed that Mr. Harris is a member of her law firm and she would recuse herself from voting in this matter.

Councilman Bothwell moved to reappoint Larry Harris and Jacquelyn Hallum to each serve a two-year term respectively, term to expire May 21, 2013, or until their successors have been appointed. This motion was seconded by Councilman Smith and carried unanimously (Councilwoman Manheimer excused).

**RESOLUTION BOOK NO. 34 – PAGE 10**

**RESOLUTION NO. 11-99 - RESOLUTION APPOINTING A MEMBER TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT**

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that the term Gary Hamrick (member with demonstrated interest in the field of energy management) on the Sustainable Advisory Committee on Energy & the Environment (SACEE) expired on December 31, 2010.

The following individuals applied for vacancies on the Sustainable Advisory Committee on Energy & the Environment: Charles Rosenblum, Parker Spears, Jeremiah Smith Hobie Orton, Michael Leahey, Josh O'Conner, William Hutchings, Isaac Savage and Torin Kexel.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended appointing Isaac Savage.

Councilman Russell moved to appoint Isaac Savage to serve a three-year term, term to expire December 31, 2013, or until his successor has been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 11**

**ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION**

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that Amanda Warren has resigned as a member of the Asheville-Buncombe Historic Resources Commission, thus leaving an unexpired term until July 1, 2012. In addition, on July 1, 2011, the terms of Diane Duermit and Hillary Cole will expire. The Boards & Commissions Committee felt it would be appropriate to roll those into this appointment process.

The following individuals applied for a vacancy on the Historic Resources Commission: Allen Currens, Jay Lively, Randall C. Hall, Brian Cook, Jay Marino and Brendan Ross.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended reappointing Hillary Cole and to interview for the other remaining seat.

City Council instructed the City Clerk to arrange interviews for Allen Currens, Randall C. Hall, Brian Cook and Brendan Ross.

Councilman Smith moved to reappoint Hillary Cole to serve an additional three-year term, term to expire July 1, 2014, or until her successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Councilman Smith encouraged everyone to observe and take advantage of free bus fare during Drive Not To Drive Week on May 16-2.

Councilman Smith was pleased to note that Asheville was crowned Beer City US for the 3rd year in a row.

Mayor Bellamy urged everyone to place non-perishable items in their mailboxes on May 14, 2011, for Stamp Out Hunger Day.

Councilman Davis announced the big Manna Food Bank fundraiser the first Saturday in June.

The following claims were received by the City of Asheville during the period of April 1 – 28, 2011: Mark Chittick (Fire), David Patterson (Parking Services), Betty J. Daughtridge (Water), Charles Bronson (Water), Creekside Homeowners Association (Sanitation), Sherah Linebaugh (Water) and Paul Fleischer (Sanitation). These claims have been referred to Asheville Claims Corporation for investigation.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 9:16 p.m.

Magdalen Burleson — Jan M Bellamy

CITY CLERK MAYOR

Tuesday – May 24, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Ms. Megan Sanchez' Kindergarten Class from Emmanuel Lutheran School led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Davis gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING MAY 24, 2011, AS "BUDDY POPPY DAY"**

Mayor Bellamy read the proclamation proclaiming May 24, 2011, as "Buddy Poppy Day" in the City of Asheville. She presented the proclamation to Ms. Kathy Cook, President of the Ladies Auxiliary to the Veterans of Foreign Wars and Past President Doris Edwards, who briefed City Council on some activities taking place during the day. The members of the VFW Post 891 invited Council to a Memorial Day cook-out on Sunday, May 29, 2011, at 2:00 p.m. at the VFW Post, 626 New Leicester Highway.

**II. CONSENT AGENDA:**

At the request of City staff, it was the consensus to add to the Consent Agenda (1) a resolution authorizing the City Manager to apply for and enter into an agreement with the U.S. Dept. of Justice in order to apply for 5 police officers under the COPS Hiring Program; and (2) a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Grizzlies Football Game Event on June 11, 2011.

Mayor Bellamy asked that Consent Agenda Item "G" be removed from the Consent Agenda for an individual vote.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 10, 2011**

**B. RESOLUTION NO. 11-100 - RESOLUTION AUTHORIZING YELLOWOOD DRIVE, RED CEDAR LANE, WHITE ASHE, AND SHORTIA LANE TO BECOME PUBLICLY MAINTAINED STREETS**

Summary: The consideration of a resolution to accept Yellowood Drive, Red Cedar Lane, White Ashe Drive and Shortia Lane in Biltmore Park.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council. Biltmore Park agreed to a voluntary annexation contingent to the acceptance of the streets in Biltmore Park provided they are constructed to City standards.

Yellowood Drive, Red Cedar Lane, White Ashe Drive and Shortia Lane were constructed to City standards but inadvertently never accepted by the City for public maintenance.

Yellowood Drive, Red Cedar Lane, White Ashe Drive and Shortia Lane are developer-constructed streets that have an average paved width of 20 to 22 feet and a length of 0.02, 0.05, 0.13, and 0.05 miles, respectively.

Following City Council's approval of this resolution, Yellowood Drive, Red Cedar Lane, White Ashe Drive and Shortia Lane will be added to the official Powell Bill list.

This action is consistent with the agreement that Biltmore Farms and the City agreed to in the voluntary annexation agreement to accept streets constructed to City standards.

Pro:

- The City will receive Powell Bill funds from the NCDOT to assist in the maintenance of the roadway.

Con:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

Typically one-third of the actual maintenance cost of a street is reimbursed by the State through Powell Bill Funds. The financial impact will be minimal.

Staff recommends City Council adopt the resolution to accept Yellowood Drive, Red Cedar Lane, White Ashe Drive and Shortia Lane as City maintained streets.

**RESOLUTION BOOK NO. 34 – PAGE 12**

**C. RESOLUTION NO. 11-101 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT PROPERTY OFF ELIZABETH STREET FROM BUNCOMBE COUNTY FOR THE REED CREEK GREENWAY**

Summary: The consideration of a resolution authorizing the Mayor to accept the conveyance of real property adjacent to Elizabeth Street from Buncombe County for the implementation of Phase III of the Reed Creek Greenway.

Buncombe County owns a 0.03 acre remnant parcel (PIN 9649-23-8026-00000) located along Elizabeth Street. This parcel is needed by the City of Asheville in order to assemble the necessary right-of-way to implement Phase III of the Reed Creek Greenway. In February 2011, staff contacted Buncombe County to inquire about conveyance of this property and the county has offered to transfer the property at no cost to the city. Acquisition of the property would allow the Parks, Recreation, and Cultural Arts Department to secure needed greenway right-of-way at minimal cost.

This action complies with the (1) FY 10-11 City Council Strategic Plan in that it supports continuing a funding alternative for enhancing the city's commitment to master plan implementation, infrastructure maintenance, and capital improvements; (2) the Asheville City Development Plan 2025 in that it implements the adopted Greenway Master Plan; and (3) Parks, Recreation, Cultural Arts, and Greenway Master Plan in that it allows for the implementation of the Reed Creek Greenway, a high priority greenway corridor within the master plan.

This item has been reviewed by the Greenway Commission and has received the Commission's endorsement. This item has also been reviewed the by Recreation Advisory Board and at their meeting on May 9, 2011, and they recommended approval.

Pros:

- Securing this property is necessary for Phase III of the Reed Creek Greenway.

- Increases the City's inventory of park space.

Con:

- Modest additional maintenance costs.

No monetary consideration required for the conveyance. Any additional maintenance costs will be absorbed into the Parks Budget.

City staff recommends that City Council adopt the resolution authorizing the Mayor to accept a 0.03 acre parcel of land, adjacent to Elizabeth Street, from Buncombe County for the purpose of implementing Phase III of the Reed Creek Greenway.

**RESOLUTION BOOK NO. 34 – PAGE 14**

**D. RESOLUTION NO. 11-1-2 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AN EASEMENT OVER A PORTION OF CITY-OWNED PROPERTY AT RIVERSIDE CEMETERY TO JON AND CAITLIN SLOOP**

Summary: The consideration of a resolution authorizing the Mayor to convey an easement over a portion of City-owned property at Riverside Cemetery to Jon and Caitlin Sloop for the purpose of installing a sewer line to service a new single family residence.

The Riverside Cemetery is owned and maintained by the City of Asheville and is approximately 49 acres in size. An MSD sewer line runs along the Northwest boundary of the property and appears to service neighboring residential homes. Asheville residents Jon and Caitlin Sloop have a contract to purchase on an adjoining vacant parcel that fronts Westover Drive and borders Riverside Cemetery. The only available sewer connection is through the Cemetery, and as such Jon and Caitlin Sloop have approached city staff with a request to purchase an easement to install a sewer service line connection to this MSD main line. Parks and cemetery management staff have inspected the proposed easement area. The location is a steep and unusable portion of the City's property, and presents no apparent conflict with the cemetery use.

The proposed easement area is approximately 270.1 square feet (10 feet wide X 27.1 feet long) and would service a new single family residence. To develop a price for the sale of this easement, city staff discussed evaluation methods with MSD, since MSD is often in the position of acquiring easements of this type. In a typical scenario, MSD calculates a per square foot value, based on the tax appraisal of a subject parcel, then reduces the price per square foot by 50% to reflect an easement value.

In this instance, the lot at Westover Drive has a tax value of $68,500 for 0.195 acres. This translates into a per square foot value of $8.08 per square foot, and when reduced by 50% yields a $4.04 per square foot easement value. When multiplied by the area of the easement (270.1), the asking price for the easement equals $1091.41.

If approved, this action would comply with City Council's goal of Job Growth and Community Development by promoting sustainable, infill growth that makes efficient use of existing resources.

This item has been reviewed the by Recreation Advisory Board and at their meeting on May 9, 2011, and they recommended approval.

Pros:

- Modest amount of compensation for the property
- The easement would not interfere with the operation of the Riverside Cemetery nor any relevant future plans

Con:

- None

The modest amount of revenue generated by the sale of the easement will be deposited into the General Fund.

Staff recommends City Council approve a resolution authorizing the Mayor to convey a 270.1 square foot easement over a portion of City-owned property at Riverside Cemetery for the purchase price of $1091 to Jon and Caitlin Sloop.

**RESOLUTION BOOK NO. 34 – PAGE 15**

**E. RESOLUTION NO. 11-103 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH DIXON HUGHES GOODMAN LLP FOR AUDITING SERVICES FOR FISCAL YEAR 2010-11**

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Dixon Hughes Goodman LLP (hereinafter referred to as Dixon Hughes) for auditing services for fiscal year 2010 - 2011.

North Carolina General Statute 159-34 requires that local governments have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission. In response to the aforementioned general statute, staff recommends retaining the services of Dixon Hughes to conduct the audit of the city's accounts for the fiscal year ending June 30, 2011.

Dixon Hughes has extensive experience auditing the City's financial systems, accounts and records. During the past two years, as the City has migrated to more complex financial systems through the implementation of the new enterprise resource planning (ERP) software Munis, Dixon Hughes has gained valuable insight and understanding of the financial system's processes and controls. These experiences will contribute to a more efficient and timely audit.

The proposed audit fee for fiscal year 2010-2011 is $109,000. The initial fee for last year's audit was $110,000 with a supplemental fee of $43,000 for additional services relating to the implementation of the ERP software (a combined total of $153,000). The fee proposal of $109,000 represents a slight decrease from the prior year's base fee of $110,000. No additional services are requested this year in connection with the ERP implementation.

As part of the engagement, Dixon Hughes has included a document required by the Auditing Standards Board that provides a framework for the auditor's communication with the Mayor and City Council and identifies some specific matters to be communicated. Pursuant to the Auditing Standards Board requirement, Dixon Hughes will communicate timely and directly with the Mayor and City Council on matters related to the financial statement audit that are, in the auditor's professional judgment, significant and relevant to the responsibilities of those charged with governance in overseeing the financial reporting process.

Additionally, Dixon Hughes has provided an audit schedule with milestones and timetables in an effort to improve audit planning and ensure that the audit report is delivered timely to the Local Government Commission.

This project complies with City Council's Strategic Operating Plan of operating the City of Asheville's organization to the highest fiscal responsibility.

Pro:

• Contracting with the current external auditor will help ensure the timely and successful completion of the annual audit.

Con:
• None noted.

A fee of $109,000 has been proposed for the audit and is included in the Finance Department's portion of the Fiscal Year 2011-2012 annual operating budget. The total cost for all services for the 2010-2011 audit year are less than last year's by $44,000.

City staff recommends adoption of the resolution authorizing the Mayor to execute a contract with Dixon Hughes Goodman LLP in the amount of $109,000 for auditing services for fiscal year 2010-2011.

In response to Mayor Bellamy, Administrative Services Director Lauren Bradley said that we have contracted with Dixon Hughes Goodman LLP since 2006. We did not bid this contract out because as a service to the City we are able to extend those contracts, especially when there is an established relationship where they may have knowledge of our financial system.

In response to Mayor Bellamy recalling the City being late in sending in our audit to the Local Government Commission, Interim Finance Director Kai Nelson explained some contract changes this year consisting of improved external auditors communication with Mayor and Council and improved planning consisting of timetables and milestones to meet.

Upon inquiry of Vice-Mayor Newman, City Manager Jackson felt it is beneficial to rotate the audit contract every three years.

From a recommendation by Mayor Bellamy, it was the consensus of Council to have the Finance Committee review the audit contract for the following fiscal year.

**RESOLUTION BOOK NO. 34 – PAGE 16**

**F. ORDINANCE NO. 3974 - BUDGET AMENDMENT TO FUND NORTH CAROLINA NATIONAL GUARD ARMORY IMPROVEMENTS**

Summary: The consideration of a budget amendment, in the amount of $10,000, for money paid to the City of Asheville by Ludus Production Inc., to establish a project budget for maintenance work on the property at 57 Shelburne Road, the former North Carolina National Guard Armory.

The City of Asheville entered into a use agreement on March 28, 2011, with Ludus Productions, Inc. allowing Ludus Productions the use of the building at 57 Shelburne Road. In exchange for this agreement, Ludus Productions paid to the City a sum of $10,000. The City intends to utilize this money for necessary work to the 57 Shelburne Road site, including mitigation of lead contamination, asbestos, underground storage tank removal and mitigation, HVAC repairs, roof repairs, and other maintenance items.

This action supports the City's Strategic Goal of Fiscal Responsibility by leveraging internal and external partnerships for pursuing capital improvements and infrastructure projects.

Pros:
- Assists in mitigating environmental issues.
- Utilizes unanticipated revenue for the site on the site.
- Augments Capital Improvement funding on the building.
- Allows more work to be accomplished in the next fiscal year on the site.

Con:

- None

This budget amendment is funded with the unanticipated revenue from Ludus Production, Inc. for use of the building at 57 Shelburne Road; therefore there is no financial impact to the City's General Fund.

City staff recommends City Council approve the budget amendment for $10,000 to be added to the Capital Improvement Plan project.

**ORDINANCE BOOK NO. 27 – PAGE 30**

**G. BUDGET AMENDMENT TO COMPLETE THE CLINGMAN AVENUE STREETSCAPE PROJECT**

This item was removed from the Consent Agenda for an individual vote.

**H. ORDINANCE NO. 3976 - BUDGET AMENDMENT FOR THE ASHEVILLE EAST OF THE RIVERWAY SUBSTANTIAL NEIGHBORHOOD PROJECT**

Summary: The consideration of a budget amendment, in the amount of $1,020,000, to authorize the use of Federal Department of Transportation TIGER II Planning Grant Funds and local matching requirements for the Asheville East of the Riverway Sustainable Neighborhood Project to fund for the Asheville East of the Riverway Sustainable Neighborhood Project to fund contracted and administrative services for predevelopment planning.

The US Department of Transportation was authorized to award TIGER II Discretionary Planning grants pursuant to Title I (Department of Transportation) of Division A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117, Dec. 16, 2009) (the "Act"). In national competition for funds, the City was awarded a grant of $850,000. The City of Asheville and the Federal Transit Administration (DOT's administrator for the funds) have executed a Cooperative Agreement to complete pre-development planning for an integrated system of greenways, safe streets and improved transit service for Asheville East of the Riverway target area. This proposed budget amendment would authorize the use this funding for contracted services and administrative costs. The funding will assist both general and specific planning efforts. It will enable two long-standing conceptual greenways to move towards implementation, as well as contribute towards the construction readiness of a portion of the Wilma Dykeman Riverway. Other products from the use of these funds will include a transportation network plan and energy plan for the target area, and assessments of development potential for key city owned properties.

The $1,020,000 amendment represents $850,000 of the TIGER II grant funds and $170,000 is the value of staff and partners time that will be assigned as in-kind contributions to the programs objectives.

This action supports the City Council's Strategic Goals under (1) Affordable, by providing an opportunity to enhance the City's long term financial commitment to master plan implementation, infrastructure maintenance, capital improvements and public facilities; (2) Green and Sustainable, by developing a plan to establish a community energy reduction goal in the east of the Riverway area; (3) Job Growth and Community development, by supporting local and regional sustainable community efforts, and specifically the East of the Riverway project; and (4) Multi-Modal Transportation, including the development of a multi-modal transportation plan that will include public transportation, greenways, streets, river access resulting in a prioritized funding list.

Pro:

- Enable the use of TIGER II Planning Grant funds to accomplish important city objectives;

Con:

- None

The federal funds carry a 20% match requirement; this requirement will be met through the designation on city staff time spent on the above projects as in-kind match, and also counting staff time by non-profit organizations partnering on the project as in-kind contributions. No cash match will be necessary so there is no impact on the City's General Fund budget.

Staff recommends approval of the budget amendment, in the amount of $1,020,000, to authorize the use of Federal Department of Transportation TIGER II Planning Grant Funds for the Asheville East of the Riverway Sustainable Neighborhood Project to fund contracted and administrative services for predevelopment planning.

**ORDINANCE BOOK NO. 27 – PAGE 34**

**I. ORDINANCE NO. 3977 - BUDGET AMENDMENT TO REFLECT UPDATED REVENUE RECEIVED FOR CIVIC CENTER RENOVATIONS**

Summary: The consideration of a budget amendment, in the amount of $2,327,331, to increase the Civic Center Capital Fund budget to reflect updated revenue received for Civic Center Renovations.

This amendment budgets the funding that has been secured to date from Tourism Development Authority, Buncombe County, the Alcoholic Beverage Control Board, along with existing Civic Center capital funds. It should be noted that an additional $300,000 is included in the FY 2011-12 Budget Ordinance that Council is also adopting tonight. The amendment will allow the renovation project to proceed with the risers and seat bid package.

This amendment has been presented to the Civic Center Commission and recommended to City Council.

This action supports the City Council Strategic Plan by supporting the Civic Center as a regional entertainment destination and improving the Civic Center customer experience.

Pro:

- Provides Capital budget authorization for revenues in the Civic Center Capital Fund without increasing the General Fund transfer.

Con:

- None.

As noted above, this budget amendment is funded with revenue from outside entities and existing CIP funds. Therefore, there is no impact to the City's General Fund budget.

Civic Center staff and Commission recommend City Council approve a budget amendment to increase the Civic Center Capital Fund budget by $2,327,331.

Councilman Davis was pleased to note the real partnership from the outside entities as everyone has worked a long time to improve the Civic Center.

**ORDINANCE BOOK NO. 27 - PAGE 36**

**J. RESOLUTION NO. 11-106 – RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE**

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**U.S. DEPT. OF JUSTICE IN ORDER TO APPLY FOR FIVE POLICE OFFICERS UNDER THE COPS HIRING PROGRAM**

Summary: The consideration of a resolution authorizing the City Manager to apply for and enter into an agreement with the U.S. Dept. of Justice in order to apply for 5 police officers under the COPS Hiring Program (CHP).

The Asheville Police Department (APD) is requesting authorization to apply for 5 police officer positions to support the ongoing crime prevention activities at the walkover access to Hillcrest Apartments, suppress group and gang related violence in public housing areas in support of the Focused Deterrence strategy and engage youth through Police Activities League (PAL) activities. The APD has been presented with this opportunity to reapply for CHP funding in Fiscal Year2011, after being mistakenly denied for funding by the COPS Office in Fiscal Year 2010.

This action conforms to the City Council's Strategic Operating Plan under 1) Fiscal Responsibility in that we are using federal CHP monies to enhance public safety through the hiring of 5 police officers, and 2) Safe City in that the hired police officers would be working to improve public safety in neighborhoods with the highest levels of crime, and supporting recreation alternatives for youth at risk for gang exposure.

Pros:

- Federal CHP monies to cover the salary and fringe benefits for 5 police officers for three years.

Cons:

- $215,000 increase to COA operating budget at the beginning of the fourth year.

In hiring the 5 police officers, the City of Asheville will receive $645,000 in salary and fringe benefits from the CHP over three years. The City will absorb $215,000 in salary and fringe benefits for the 5 police officers beginning the fourth year.

City staff recommends approval by City Council to apply for the 5 CHP police officer positions.

**RESOLUTION BOOK NO. 34 – PAGE 19**

**K. RESOLUTION NO. 11-107 – RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES FOOTBALL GAME EVENT ON JUNE 11, 2011**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Grizzlies Football Game Event on June 11, 2011.

Asheville Grizzlies has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Asheville Grizzlies Football Game Event and allow for consumption at this event.

The Asheville Grizzlies Football Game Event will be held on Saturday, June 11, 2011, from 5:30 p.m. – 11:00 p.m., within the boundaries of Memorial Stadium as per the event area limits referenced on the accompanying site map.

This action has no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for Asheville Grizzlies

Con:

- Potential for public safety issues

There is no fiscal impact.

City staff recommends City Council adopt the resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Grizzlies Football Game Event.

**RESOLUTION BOOK NO. 34 – PAGE 20**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Manheimer moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

**ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

**G. ORDINANCE NO. 3975 - BUDGET AMENDMENT TO COMPLETE THE CLINGMAN AVENUE STREETSCAPE PROJECT**

Summary: The consideration of a budget amendment, in the amount of $250,000, to transfer savings from two completed capital improvement projects to the Clingman Avenue Streetscape project.

On February 9, 2010, City Council approved a contract with Moore & Sons Site Contractor's Inc. to construct the Clingman Avenue Streetscape project. Shortly after the project was awarded, members of the bicycling community voiced their concerns about the bicycle climbing lane not going all the way to Hilliard Avenue.

After much discussion, it decided to extend the climbing lane all the way to Hilliard Ave, in the contract with Moore & Sons. In order to accomplish this, an extensive utility relocation effort needed to be designed and carried out, in addition to new infrastructure to accommodate the full length of the climbing lane. These funds were not originally budgeted into the project. These relocations are the controlling operation to project completion. Once they have been completed, Moore & Sons can begin construction on the two lane section of Clingman Avenue, and ultimately complete the project. Staff estimates that an additional $250,000 is needed to complete this project.

Staff has identified savings from two other recently completed construction projects that can fill the funding needs for Clingman Ave. The Patton Avenue sidewalk project was recently completed with $135,000 remaining in City funds. The Kimberly Avenue ARRA project was also completed under budget, with $115,000 left in available City funds. Staff proposes that these funds totaling $250,000 be transferred to the Clingman Avenue Streetscape project for completion.

Staff has recently successfully completed a federal financial and engineering audit of the project. This was due to the fact that the project was partially funded by NCDOT and FHWA grants. Those grant funds have already been recovered from the respective agencies to the City.

The audits did require follow up upon project completion. This budget amendment will allow this to happen.

As you may already be aware of, the "lower" section of the project has been complete since last fall. We have received much positive response from the community. We anticipate that completion of the "upper" section will do the same.

The project complies with Council's Strategic plan in the Focus Area of Sustainability, as it will address the City's aging infrastructure, as well as fully leveraging funding from the State for transportation improvements. The project also addresses the Focus area of Green, due to the improvements to the City's mutli-modal transportation options, and the unique stormwater bio-retention swale to capture and naturally filter storm run off. In addition, this action complies with the Comprehensive Bicycle Plan.

The project will provide many improved bicycle and pedestrian features, and include a roundabout at the intersection of Clingman Ave. and Roberts Street. It also includes new on-street parking from Roberts Street to Clingman Ave. Extension, bike lanes on both sides from Riverview Street to Clingman Ave. Extension, and a bicycle climbing lane on the up grade side of Clingman Ave. from Clingman Ave. Extension to Hilliard Ave.

Pros:

- Approval of this action will allow for the completion of the Clingman Streetscape project, providing a gateway to a major entrance to the City's west side.
- Utilize saved City funds, thus not requiring any additional funds from the General Fund.
- Fulfilling two previously approved agreements with NCDOT.
- Create a more bicycle and pedestrian friendly facility for the Clingman community by having a full length bicycle climbing lane the entire length of the project.

Con:

- Obligates savings from the Patton Avenue sidewalk project and the Kimberly Avenue ARRA project that otherwise would have gone into capital reserves.

As noted above, this budget amendment will be funded with savings from the Patton Avenue sidewalk project and the Kimberly Avenue ARRA project. If these savings were not used for the Clingman Avenue project, then they would go into capital reserves and be available for future capital needs.

City staff recommends City Council adopt a budget amendment in the amount of $250,000 to complete the Clingman Ave. Streetscape project.

Mayor Bellamy noted that several times last year she had requested that any left-over capital funds from completed sidewalk projects be used toward more sidewalks. She expressed concern that the left-over funds from the Patton Avenue sidewalk project are being used to complete the bicycle climbing lane all the way up to Hilliard Avenue (noting that she is supportive of the bicycle lane).

Director of Administrative Services Lauren Bradley explained that the savings identified from projects that didn't close until the third quarter of the fiscal year.

Engineering Services Manager Greg Shuler explained the original scope of the Clingman Avenue project. He said the reason why the extended bike lane was not included in the original design was due to the excessive cost of relocating numerous utilities, which he described. Out of the $250,000, $135,000 was left-over Patton Avenue sidewalk money.

City Manager Jackson said that it was the direction of Council that the amount of funds for sidewalks increase with this budget as a result of closed out projects. In the Fiscal Year 2011-12 budget for the sidewalk program, under the Capital Improvement Program, there is $165,000 from savings from closed projects. There is a total of approximately $2 Million going toward sidewalk construction, which is two times the total that is being used on sidewalks in the current year.

Mayor Bellamy understood that is being accomplished for Fiscal Year 2011-12; however, in this current year we are allocating $135,000 from a sidewalk project for bike lanes.

Vice-Mayor Newman was supportive of this very important linkage, but noted spending $250,000 for this bike lane linkage was expensive. He wanted to make sure that we feel good that this is going to deliver the best benefit to the City, as there are a number of city-wide projects from the bicycle plan which will improve the bicycle environment in Asheville. Mr. Shuler responded that this linkage is identified on the Pedestrian Thoroughfare Plan, along with support from the bicycle community, as well as our Transportation Department. He felt this will certainly improve the safety of bicyclists.

Councilman Russell moved for the adoption of Ordinance No. 3975. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Mayor Bellamy voting "no."

**ORDINANCE BOOK NO. 27 – PAGE 32**

## III. PRESENTATIONS & REPORTS:

### A. QUARTERLY REPORTS

**Finance Committee**

Councilman Russell, Chairman of the Finance Committee, updated Council on some major accomplishments during the 3rd quarter of the Committee as follows:

**Strategic Operating Plan**

Assistant City Manager Jeff Richardson said that the Asheville City Council identified short and long term goals at the January 2010 strategic planning retreat and staff is providing its quarterly updates on progress of the five key focus areas.

City Council asked City staff to provide quarterly updates on key strategic initiatives associated with the five primary focus areas of the City's Strategic Plan. Staff has tracked projects using performance indicators and measurements through the Fiscal Year 2010-11. Staff continues to use a video format to provide project updates so that Council hears from a variety of line and management staff involved in key goals and milestones.

He then showed Council a video showing the staff's progress on the key strategic areas for this quarter.

In addition, as a subset to this presentation, staff provided the Economic Development Key Indicator Report.

City Council has asked for an activity report on a quarterly basis of the Domestic Partner Registry. For the first three weeks of implementing the Registry, 13 couples have registered.

This information is to update City Council on key operational initiatives specific to the Strategic Operating Plan. No action is necessary at this time.

In response to Councilman Smith, Director of Transportation Ken Putnam said that the City does have a plan of action regarding maintenance under the Hillcrest Bridge.

In response to Councilman Smith, Mr. Putnam said that there will not be bike lanes on Brevard Road; however, they will construct a wide outside lane for bicyclists.

**Financial Report**

Director of Administrative Services Lauren Bradley said that the financial information in this report reflects the City's overall financial position for the fiscal year through March 2011.

The following is the executive summary:

*Amendments.* There were three General Fund budget amendments adopted during the third quarter: 1) $5,071 in contributions from the Asheville Parks and Greenways Foundation to support various programs and special projects within the Parks, Recreation & Cultural Arts Department; 2) $15,000 to recognize additional revenue received from the Asheville Tourists that is being used to fund operations and capital improvements to McCormick Field; and 3) $284,000 from capital reserves to fund the replacement of HVAC equipment at Pack Place Education, Arts & Science Center. A summary of the budget changes since July 1 is presented below.

| | |
|---|---|
| Adopted Budget | $ 91,635,962 |
| Health Care Technical Adjustment | (3,553,000) |
| Budget Amendments: | |
| City Hall Repairs* | 450,000 |
| Annexation Revenue & Expenses | 166,757 |
| Parks & Greenway Foundation | 5,071 |
| Asheville Tourists Payment | 15,000 |
| Pack Place HVAC Repair** | 284,000 |
| 3/31/2011 Budget | $ 89,003,790 |

* Fund balance appropriation
** Capital reserve appropriation. There is approximately
$166,000 remaining in capital reserves

*Revenues.* Through March 31, 2011, the City has collected $71,719,635 in General Fund revenue, which represents approximately 81% of the total General Fund revenue budget. In March, the City received an additional $86,300 in Powell Bill funding after the State corrected an error in its original Powell Bill funding for FY 2010-11. The City also continued to see modest growth in sales tax revenue during the third quarter, with revenue for the year now up 1.7% compared to last fiscal year. Revenue from building permits continues to trend lower than budget. In addition, the third quarter report from the ABC Board indicates that the City's revenue that from ABC sales will come in under budget this year. Overall, staff is now projecting that *total FY 2010-11 General Fund revenue will come in under budget by $1.35 million.*

*Expenditures.* General Fund expenditures through March 31, 2011, total $60,891,538 or 68.4% of the budget. This rate of expenditure is slightly lower than in prior years, which reflects the impact of the savings strategies that staff has implemented during the fiscal year. *These strategies include a selective hiring program, line item reductions, deferring capital expenses where possible, and seeking opportunities to maximize efficiency in operations.*

*Fund Balance.* The City ended FY 2009-10 with available fund balance of $12.3 million, which equated to 14.2% of FY 2009-10 expenditures. *Based on financial results through the third*

*quarter, staff is still projecting that FY 2010-11 expenditures will roughly equal revenues, which means available fund balance will remain at $12.3 million or 14.2% of estimated expenditures.*

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS INGLES MARKETS INC. LOCATED AT 863 BREVARD ROAD FOR THE CONSTRUCTION OF A 99,073 SQUARE FOOT GROCERY STORE AND GASOLINE FUELING STATION WITH MODIFICATION REQUESTS TO OFF-STREET LOADING, OFF-STREET PARKING AND RETAINING WALL STANDARDS**

**ORDINANCE NO. 3978 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS INGLES MARKETS INC. LOCATED AT 863 BREVARD ROAD FOR THE CONSTRUCTION OF A 99,073 SQUARE FOOT GROCERY STORE AND GASOLINE FUELING STATION**

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

Urban Planner Nate Pennington submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pennington said that this is the consideration of the issuance of a conditional use permit for the project identified as Ingles Markets, Inc., located at 863 Brevard Road, for the construction of a 99,073 square foot grocery store and gasoline fueling station with modification requests to off-street loading, off-street parking and retaining wall standards. This public hearing was advertised on May 13 and 20, 2011.

He said that the applicant is requesting site plan approval for one parcel zoned RB (Regional Business) for the redevelopment of an existing Ingles grocery store in accordance with Section 7-5-9(a) of the UDO which designates review for commercial buildings with a gross floor area of more than 100,000 square feet. Level III projects are reviewed as Conditional Use Permits in the Regional Business district.

The project site consists of one parcel comprising 8.06 acres according to the submitted site plans. The project proposes to demolish the existing Ingles store in phases so as to remain open during construction and reconstruct a larger grocery store (City Exhibit 4 – Site Plan). Further, the project will include a gas canopy and retail kiosk along Brevard Road. The following list provides a breakdown of the existing shopping center and the proposed development:

| | |
|---|---|
| Existing | |
| Ingles Store: | 53,572 SF |
| | |
| Proposed | |
| New Ingles Store: | 99,166 SF |
| Gas Canopy/Retail Kiosk: | 4,853 SF |
| **Total Shopping Center:** | **104,019 SF** |

The combined square footage of the development meets the Level III review threshold (projects exceeding 100,000 square feet) and is subject to the Conditional Use Permit findings outlined in Section 7-16-2(c) of the UDO.

The project is proposed to be phased in a way that will allow Ingles to remain operational during all phases of construction. Phase I involves the demolition of a portion of the building along the northern perimeter including grading for a portion of the new building. Once this is complete, construction will begin in this area on the new building. When complete, Ingles will relocate into the new portion of the building and the rest of the remaining building will be demolished and rebuilt to form a unified store as part of Phase II.

Primary access to the site is from an existing traffic light along Brevard Road. A secondary un-signalized entrance (to be used primarily as a truck route) is proposed near the existing adjacent Citgo gas station and convenience store to the south.

According to the site plan, 297 spaces are required inclusive of required ADA parking. A bike rack with fifteen (15) spaces is proposed in front of the new Ingles store. A modification request is being sought to authorize a reduction in the amount of required off-street parking (see Modifications section below).

Significant landscaping will be required throughout the site, including street trees, parking lot landscaping, street buffering, building impact landscaping, dumpster/loading zone screening, and a Class "B" bufferyard along the northwest portion of the rear property line. The rear buffer separates the neighboring residential zoning designation (RS-4) from the commercial zoning designation (RB) of the subject property.

The open space requirement for this type of development is 15% of the total site size; a total of 1.2 acres for this site. The site plan illustrates that 1.38 acres has been reserved to meet this requirement.

While signage is illustrated on the elevation drawings for this project, it is not part of this development review. Signage for the development will be reviewed in detail with the master sign package application following the public hearing on this project.

The applicant is requesting a total of three (3) modifications to the site plan which must be approved by City Council. The staff supports all three (3) of the requests.

1. *Retaining Walls* – Section 7-10-5 of the UDO requires that foreground landscaping or attached vegetative screening be required for any retaining wall sections over 20 feet in height regardless of location relative to a public or private street. Retaining wall "C" is proposed to be located behind and partially to the side of the new building in the northwest corner of the subject

property. The wall varies in height and approximately 85 linear feet will exceed 20 feet in height. The wall will be constructed adjacent to a vehicular access aisle that wraps around the store. The applicant has requested a modification to not include foreground or attached vegetative landscaping along the 85 linear feet of wall that exceeds 20 feet. The wall will meet the standard requiring it to be faced with natural or artificial stone, brick, form-liner art or patterns. Given the difficulty in planting in such close proximity to the vehicular access aisle and the location of the wall behind and partially to the side of the store, the **staff supports this request.**

2. *Off-Street Parking* – Section 7-11-2(c)(1) of the UDO requires a minimum number of off-street parking spaces based on land use. The Ingles development requires a total of 297 spaces. 217 spaces are provided resulting in a deficiency of 80 spaces or approximately 26% of the required total. The applicant has provided staff with a parking analysis for supporting the parking reduction based on the peak operating hours of the store. Therefore, the **staff supports this request.**

3. *Off-Street Loading* – Section 7-11-2(c)(3) of the UDO requires a minimum number of loading berths based on structure size. For a store of this size, four (4) loading berths are required. The applicant has proposed two (2) loading berths as part of their development. This design is similar to other Ingles stores throughout the area including the location closest to downtown Asheville on Tunnel Road. The site is encumbered by sloping topography along the rear perimeter of the property. Therefore, the building was designed to include the loading berths along the south side of the building towards the rear of the property. The applicant has stated that the Ingles distribution center is located approximately 20 minutes from the Brevard Road store and the proximity of the center to the store allows for coordinated deliveries. Given the topography of the site and the proximity of the distribution center, the **staff supports this request.**

This proposal was recommended for approval with conditions by the Technical Review Committee (TRC) on March 7, 2011. No members of the public were present to speak on this project. The staff did receive a phone call sometime after the meeting from a neighbor who lives on Wedgefield Drive who was concerned about trash and debris blowing upward from the existing Ingles store onto adjacent properties.

At their regularly scheduled meeting on May 4, 2011, the Planning and Zoning Commission unanimously approved this project. One neighboring property owner spoke about concerns related to trash and debris blowing onto her property from the Ingles site in the past but expressed positive support for the project moving forward.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

This project represents the redevelopment of the existing Ingles store into a larger grocery store, gas canopy and retail kiosk.

The residential neighborhood to the rear of the property is separated from this project by sloping topography and a Class "B" bufferyard. The remaining portions of the property are surrounded by similar commercial developments of similar zoning along the Brevard Road corridor.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
As noted in Finding #2, the proposed development is compatible with surrounding commercial uses and the residential nature of the property to the rear of the development will be buffered by additional vegetation, open space and the existing topographical elevation change.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The site is adjacent to a hotel to the east, a gas station to the west and a number of commercial uses along the Brevard Road corridor including the Biltmore Square Mall, fast food restaurants and other commercial developments. The proposed use is consistent with both the existing zoning and character of the Brevard Road commercial corridor in which it is located while maintaining sensitivity to the adjoining residential neighborhood along Wedgefield Drive behind the proposed store through the use of mitigating factors including additional landscaping, open space and existing topography.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
Elements of the proposal are aligned with the City's goals and objectives as noted in the Compliance with Comprehensive Plan and other Adopted Plans section (listed above). Specifically, the redevelopment and expansion of the store is consistent with the goals of infill development along an established commercial corridor.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The site is located just off Brevard Rd (NC 191) and is within approximately one (1) mile of an entrance to I-26. A bus shelter is proposed along Brevard Road to accommodate public transportation. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
A traffic impact study has confirmed that the proposed use will not cause undue traffic congestion or create a traffic hazard along the existing street network. The main access point is currently controlled by an existing traffic signal.

Based on the above findings and the analysis provided in the report, staff finds this request, with conditions noted, to be reasonable.

Pros:

- Provides an opportunity to redevelop and upgrade an existing developed site.
- The project will ultimately provide additional jobs to the local economy.

- An enhanced architectural building and landscaped parking lot will significantly improve the overall appearance of the grocery store making the development more compatible with the surrounding area.

Con:

- None noted

Staff recommends approval of the project as submitted by the applicant, including the modifications supported by the staff.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:02 p.m.

The Civil Engineer for the project made himself available for Council questions.

Mayor Bellamy closed the public hearing at 6:04 p.m.

Upon inquiry of Councilman Bothwell, Mr. Pennington said that Ingles has submitted a lighting plan within the 20 foot candle range in accordance with the City requirements.

Councilman Smith felt it may be time for the City to review our parking requirements city-wide as they may be too high.

Councilman Russell moved for the adoption of Ordinance No. 3978, granting a conditional use permit for the project identified as Ingles Markets, Inc., located at 863 Brevard Road, for the construction of a 99,073 square foot grocery store and gasoline fueling station with modifications to off-street loading, off-street parking and retaining wall standards, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilwoman Manheimer and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 38**

**B. PUBLIC HEARING TO CONSIDER A SIGNAGE PLAN FOR A NEW INGLES STORE AND ANCILLARY USES LOCATED AT 863 BREVARD ROAD**

**ORDINANCE NO. 3979 - ORDINANCE APPROVING A SIGNAGE PLAN FOR A NEW INGLES STORE AND ANCILLARY USES LOCATED AT 863 BREVARD ROAD**

Urban Planner Kim Hamel said that this is the consideration of an ordinance approving a signage plan for a new Ingles store and proposed ancillary uses located at 863 Brevard Road. This public hearing was advertised on May 13 and 20, 2011.

The proposed master signage plan is being reviewed concurrently with a Level III, Conditional Use application (also prepared by the applicant) for the redevelopment of the site.

The signs included in this proposal address the attached building signage for the new supermarket, and the signage proposed for a new gasoline sales station.

The project site consists of 8.06 acres, is zoned Regional Business (RB), and is considered a single-tenant development as no other tenant, except for Ingles exists on the site. Single-tenant development signage is permitted for the new supermarket component of the project, and also for the gasoline service station since the use can stand independently from the grocery store and is able to comply with Unified Development Ordinance (UDO) development and design standards as if it were on its own parcel.

As separate single tenants, each tenant is permitted up to 125 square feet of attached signage that could be separated into two separate signs for a cumulative total not to exceed 125 square feet. In addition, a separate free-standing sign is permitted for a total of, again, 125 square feet with a height not to exceed 25 feet.

Signage is requested for each separate service and includes:

- Multiple attached signage for the principal Ingles supermarket
- Attached signage for the retail gasoline service center (Gas Express); and
- One single tenant free-standing pylon sign with a changeable copy panel.

The following table provides a summary of the signage proposed, as well as, what would be allowed under the existing sign code.

| **INGLES MARKET ATTACHED SIGNAGE: (EXHIBIT I)** | **PROPOSED** | **WHAT IS ALLOWED** | **AMOUNT EXCEEDED** |
|---|---|---|---|
| Ingles (Store Sign) | 202.02 s.f. | 1sign @ 125 s.f. (may be split into 2 signs max.) | 77.02 s.f. |
| American Owned | 36.0 s.f. | Not allowed unless part of above | 36.0 s.f. |
| Fresh Foods | 29.46 s.f. | Not allowed unless part of above | 29.46 s.f. |
| Starbuck's | 16.0 s.f. | Not allowed unless not visible from the R.O.W. | 16.0 s.f. |
| Cafe | **8.48 s.f. | Not allowed unless not visible from the R.O.W. | 8.48 s/f/ |
| Pharmacy Drive-Thru | *13.13 s.f. | Wayfinding/directional | allowed |
| **TOTAL ATTACHED SIGNAGE:** | **291.96** | **5 signs versus 2** | **166.96** |
| **FREE STANDING (EXHIBIT II)** | | | |
| Free-standing Pylon | 180.26 s.f. | 1 sign @ 125 s.f | 55.26 s.f |

*The Pharmacy Drive-Thru sign was not included in the total square footage since it is considered wayfinding or directional signage. ** There is also a precedent for exempting the Café sign when reduced in size so as not to be visible from the public right-of-way or adjacent properties.*

*Note: The gas services station and kiosk are treated as a single tenant since the property area can be subdivided to stand on its own as a separate development. **When a free-standing sign*

*is not proposed, (1) additional attached sign is permitted on the building for a total of 3 attached signs (1@ 125 s.f. and 2 signs @ 62.50 s.f)*

| GAS SERVICE STATION AND KIOSK SIGNS (EXHIBIT III AND IV) | PROPOSED | WHAT IS ALLOWED | AMOUNT EXCEEDED |
|---|---|---|---|
| Gas Express and Ingles: Canopy | 36.8 s.f. | 1sign @ 125 s.f. (may be split into 2 signs max.) | Permitted and Complies |
| Ingles, canopy | 19.25 s.f. | Split sign allowance | Permitted and Complies |
| Kiosk Signage | 15.03 s.f. | 3rd attached sign permitted | Permitted and Complies |
| **TOTAL ATTACHED SIGNAGE:** | **71.08 s.f** | 3rd attached sign permitted: No free-standing sign proposed | Permitted and Complies |

As stated above, both the grocery store and gas service station are regarded as separate tenants and are allowed the same single tenant allowances. The attached signs proposed for the grocery store exceeds the number of signs allowed (5 instead of 2) and also exceeds the total square footage allowed (291.96 s.f. instead of 125 s.f.). The free-standing pylon sign for the site also exceeds the total square footage allowed (180.26 s.f. instead of 125 s.f)

The signage for the gas center actually meets the existing sign code requirements since a free-standing ground sign is not proposed for the gas center.

The stated purpose of allowing the consideration of a separate signage plan is as follows:

*The purpose behind this section is to permit creativity in sign design and placement to address site issues and constraints associated with topography, pedestrian-orientation, way-finding and other conditions unique to the subject development.*

In the context of the significant number of applications for signs received daily by the City, it is somewhat difficult to recognize the creativity in the proposed signage plan. Also, when compared to the unique characteristics associated with other larger redevelopment plans presented by Ingles, a signage plan at this site is somewhat more difficult to support given that the redevelopment is on a much smaller parcel and that a multi-tenant component is not included in this application.

We do, however, feel that a precedent has been set through the approval of three other sign packages for Ingles, all of which are substantially similar to the signage included in this report, including one approval for a single-tenant development on Tunnel Road. We also support Ingles proposal to seek only one free-standing sign at this location versus other approvals that permitted two or three free-standing signs at one location.

Pros:

- Provides clear and recognizable signage to a large grocery retailer; and
- Unlike other sign plan approvals for Ingles, only one free-standing sign is proposed for the development.

Cons:

- Exceeds existing standards without creatively addressing pedestrian-orientation or wayfinding;

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- May continue to set a non-conforming precedent for other stores in Asheville.

Staff recommends that the signage plan for the Ingles development located at 863 Brevard Road be approved as submitted with the following conditions: (1) All signs shall meet the required setbacks, site distance triangles and building code requirements; (2) Window films shall be limited to images only; and (3) All signs shall comply with the proposed standards and no exceptions or variances are permitted.

Mayor Bellamy opened the public hearing at 6:09 p.m., and when no one spoke, she closed the public hearing at 6:09 p.m.

Councilman Smith was concerned that it felt like Council is granting a special exemption to a single company (Ingles). If it's Council's will to have a bigger signage plan for big box stores, he would be open to studying it, but he did not support a standing exemption.

Councilman Bothwell could not support the signage plan as he felt the existing sign regulations are adequate and all businesses should comply.

Vice-Mayor Newman explained that we have a policy that states there are standard signage regulations that anyone is allowed by a use by right. And, if there is a large project, the developer can present a master plan for signage, which is more tailored for that specific site. He disagreed that this is a special exemption for Ingles, as Council has approved several cases where there was a consolidation of signs for a more aesthetically pleasing site. He felt that allowing the signage plan allows a developer to be creative.

There was a brief discussion regarding the City's ability to govern billboards vs. signs.

At the suggestion of Councilman Russell, it was the consensus of Council to have the Planning & Economic Development Committee review the existing sign code requirements.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3979. This motion was seconded by Councilwoman Manheimer and carried on a 5-2 vote with Councilman Bothwell and Councilman Smith voting "no."

**ORDINANCE BOOK NO. 27 – PAGE 43**

**C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING MASTER PLAN FOR THE PROJECT IDENTIFIED AS BUNCOMBE COUNTY COURTHOUSE LIFE SAFETY ADDITION, LOCATED AT 60 COURT PLAZA, TO ADD PHASE II FOR THE CONSTRUCTION OF A NEW 105,000 SQUARE FOOT BUILDING IDENTIFIED AS BUNCOMBE COUNTY COURTS BUILDING AND STREETSCAPE ENHANCEMENTS ALONG COLLEGE STREET WITH MODIFICATION REQUESTS TO STANDARDS AS FOUND IN SECTION 7-8-18 OF THE UNIFIED DEVELOPMENT ORDINANCE**

**ORDINANCE NO. 3980 - ORDINANCE TO AMEND THE CONDITIONAL ZONING MASTER PLAN FOR THE PROJECT IDENTIFIED AS BUNCOMBE COUNTY COURTHOUSE LIFE SAFETY ADDITION, LOCATED AT 60 COURT PLAZA, TO ADD PHASE II FOR THE CONSTRUCTION OF A NEW 105,000 SQUARE FOOT BUILDING IDENTIFIED AS BUNCOMBE COUNTY COURTS BUILDING AND STREETSCAPE ENHANCEMENTS ALONG COLLEGE STREET**

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to consider an amendment to the Conditional Zoning master plan for the project identified as Buncombe County Courthouse Life Safety Addition, located at 60 Court Plaza to add Phase II for the construction of a new 105,000 square foot building identified as Buncombe County Courts Building and streetscape enhancements along College Street with modification requests to standards as found in Section 7-8-18 of the Unified Development Ordinance. This public hearing was advertised on May 13 and 20, 2011.

She said that this is a request for review of a proposed amendment to a previously approved Conditional Zoning in the CBD (BP # 10-1957 – Ord. No. 3881) to accommodate the construction of a new courts building adjacent to the Buncombe County Courthouse.

The project area consists of 4 parcels with an approximate area of 1.864 acres. The site is located at the corner of College Street and Davidson Street (closed ROW) and extends eastward along College Street towards the roundabout. This area is zoned Central Business District and is currently vacant – acting as the staging area for the Life Safety Addition currently under construction.

The Life Safety Addition (LSA) approval from 2010 is modified under this proposal, removing the lobby entrance and monumental staircase / hardscaped plaza as shown on those plans. This amendment includes the Phase II building alluded to during the 2010 LSA review, a revised plaza / streetscape design and includes the demolition of the rear portion of 205 College Street.

The proposal is for a new four-story Buncombe County Courts Building which will have 105,000 square feet of gross floor area. The height is shown as 74'4" to the floor of the highest occupied level and 86' to the top of the parapet.

The proposed Courts Building includes the lobby / entry vestibule shown in the original LSA proposal, with upgraded areas for security guards and a separate security office, entry points with two metal detectors and an handicapped accessible gate and an adjacent exit area. All visitors to the historic County Courthouse will use this entry point as well, and will be routed through the new Courts Building to the LSA and then into the historic Courthouse. This consolidated ground level entry/exit lobby enhances security options for the Courthouse in a way to make for more efficient check-in and allows guards to monitor all coming and going from the building(s).

The plaza design from the previous approval is revised under this submittal and will be significantly enhanced and enlarged with benches, increased landscaping, pedestrian pathways and monumental steps. These improvements will aid in providing clear visual direction to pedestrians as to where to access the Courthouse as well as offering public gathering spaces. Sidewalks directly along College Street will be enlarged to 11' in width and street trees are provided along this frontage. The site layout proposes eliminating all on-street parking spaces along College Street for security purposes.

The following modifications require approval by City Council with a recommendation from the Downtown Commission and Planning & Zoning Commission:

1. Pedestrian Entrance – The pedestrian entrance is required to be on a frontage line, however in this design, the lobby is located off of the College Street frontage to face into the plaza / gathering spaces.
2. Fenestration – 70% of the street-level façade is required to be composed of windows, doors and other openings but due to security concerns, there are no openings proposed along the College Street frontage.

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3. Solid Expanses – Area of opaque wall are not permitted to extend more than 20' in length at the street level without windows, doors or other openings. For security concerns, the entire ground level along College Street is opaque.

The Technical Review Committee (TRC) evaluated this request on April 4, 2011, and it was approved with conditions. No opposition has been received as of the writing of this report.

On April 8, 2011, the Downtown Commission unanimously (9-0) recommended approval of the project and design, including the modifications of pedestrian entrance, fenestration and solid expanses, with the following conditions (1) encourage the applicant to look at the cap and see if there is a way to minimally increase detail; (2) the applicant should look at possibilities to integrate the street furniture (bollards, benches, handrails) from a design standpoint from Pack Square Park into this area; and (3) encourage the application to look at street trees with a more upright growth pattern and higher limb height and (4) try to lessen the number of bollards to minimize visual impact. They also recommended approval of two modifications that were subsequently determined not to be needed: setback and signage.

The Planning & Zoning Commission discussed this proposal at their meeting on May 4, 2011 and unanimously (7-0) recommended approval of the project, including the modifications as described in this report.

Life Safety Addition proposed to be completed by May 2012. Courts Building proposed to be completed by January 2013.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   There are no significant natural or topographic features on the site. There is a slight grade change running along the frontage which is accommodated along College Street through the plaza design and monumental steps leading pedestrians to the entry point.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The development is not expected to injure the value of adjoining or abutting properties. The use enhances and improves the existing government and public safety functions along this block (all adjoining and abutting parcels are owned by the County).

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The new Courts building is appropriate to the area, which has evolved as a governmental "campus" location for City and County uses. The proposed development is generally

compatible with the Buncombe County Courthouse in design and character by use of like materials, while allowing for a more contemporary vision. Additionally, the changes to the plaza and College Street pedestrian area will greatly enhance the character of the waiting spaces and viewing areas for the various war and fallen officer monuments.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The *Asheville City Development Plan 2025,* the *Downtown Asheville Center City Plan* and the *Downtown Master Plan* all stress that having a mix of uses – which includes civic (governmental) – is an asset and vital for the strength of downtown. Specifically, the City and County services are essential to bringing people downtown, providing employment and reinforcing downtown's status as the center of the region. The *Center City Plan* states that it is important to consolidate governmental uses to the existing "campus" location (p. 60-61) which this proposal facilitates.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
This proposal is located near major road facilities and along multiple City bus routes in the walkable Central Business District. In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project has been reviewed by the City Traffic Engineer and it should not cause undue traffic congestion along the existing street infrastructure. The anticipated traffic is expected to be less than one hundred (100) vehicles per hour during the morning and afternoon peak hours during a typical weekday; no traffic impact statement is needed.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Provides an upgraded, modernized judicial facility with enhanced security for judges as well as the public, secure access to and from the jail and the layout of the building allows room for future expansion.

- The overall project provides needed safety and access upgrades to the Buncombe County Courthouse building, prolonging the usability of this iconic historic structure.

- Moving courts uses from the Buncombe County Courthouse building creates opportunities for renovation and expansion with the historic structure.

- Enhancements to the plaza and widened sidewalk create greater visibility along College Street as well as a cohesive, designed streetscape experience.

Con:

- Due to the nature of the use, security restrictions result in elimination of on-street parking as well as a non-active ground level façade, which may somewhat lessen the pedestrian experience and activity along College Street in front of the building.

Staff recommends approval of the amendment to the conditional zoning as submitted by the applicant, including the modifications to location of pedestrian entrance, fenestration and expanses of solid wall.

Mayor Bellamy opened the public hearing at 6:24 p.m., and when no one spoke, she closed the public hearing at 6:24 p.m.

Mr. Keith Hargrove, architect for the project, responded to Mayor Bellamy's concerns regarding the materials on the side of the building facing College Street, as that is a gateway into downtown.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No. 3980, to amend the Conditional Zoning master plan for the project identified as Buncombe County Courthouse Life Safety Addition, located at 60 Court Plaza, to add Phase II for the construction of a new 105,000 square foot building identified as Buncombe County Courts Building including (1) streetscape enhancements along College Street; and (2) modifications to standards as found in Section 7-8-18 of the Unified Development Ordinance, subject to the following conditions (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) The applicant is required to record the signed ordinance with the Buncombe County Register of Deeds. This motion was seconded by Councilman Russell and carried unanimously.

**ORDINANCE BOOK NO. 27 - PAGE 50**

**V. UNFINISHED BUSINESS:**

**A. STATE LEGISLATIVE UPDATE**

City Attorney Oast said that this is a review of activity in the 2011 Session of the North Carolina General Assembly.

Council adopted its Legislative Agenda on January 25, 2011. The North Carolina General Assembly convened for the 2011 regular session on January 26. By letter dated February 21, 2011, the City transmitted its legislative agenda and supporting materials to the local delegation. The deadline for submitting local bills to bill drafting and for the introduction of local bills in either house has passed. The next significant deadline in the General Assembly is the "crossover" deadline, now June 9, which is the date by which a bill needs to be adopted in one chamber of the General Assembly in order to "cross over" to the other chamber and remain eligible for consideration during this session.

I. Asheville Requests.

A. Woodfin/Asheville boundary adjustment. We have engaged a surveyor to provide a more precise description of what the new boundary will be. We contacted property owners in the area to let them know what was happening but have heard nothing

back. We will work up final language for inclusion in the bill and provide it to legislative staff. If adopted, law would be effective July 1.

B. Clarification of the Video Service Competition Act. Although there has been much discussion and debate about legislation for cities to engage in fiber-optic service as a public enterprise (popularly known as "municipal broadband"), there has been no discussion of preserving local government I-Nets (or other facilities) that were part of local cable franchises.

C. Financing of local energy improvements. A bill to implement the NC Save$ Energy Program which would provide assistance where needed for energy efficiency improvements to personal residences, has been introduced in the House. Our office provided some assistance to the legislative staff. Senator Nesbitt is also interested in this initiative, and we have supplied information to his office.

II. Other Legislative Matters Affecting Asheville.

A. Annexation. There continues to be much interest in revising the annexation law. A bill has been introduced (HB 845) that would allow annexation to continue, but would require that cities install water/sewer connections within a certain time, and would provide a petition process for residents in the annexation area to opt out. This does not appear to affect current annexations, and is not a moratorium. However, other bills to "undo" specific annexations, including Biltmore Lake, remain in play, and will likely come up for consideration once HB 845 is acted on (adoption seems likely).

B. Greater Asheville Area Regional Airport Authority. On March 30, a bill (HB 552) was introduced to establish the Greater Asheville Regional Airport Authority as an independent authority. The City of Asheville did not request this bill, and had no input into the language of it. The proposal provides for Henderson County, Buncombe County, and Asheville each to have two seats, with the seventh seat to be appointed by the other six, and generally provides for the Authority to have some governmental powers, such as the ability to own real property.

Most if not all of the land on which the airport is situated is owned by the City of Asheville, and leased to the Airport Authority. Of particular concern to the City regarding the legislation is a provision that requires the City to convey its property to the Airport Authority, apparently without compensation. We are investigating what property would be involved, how the property was acquired, who paid for it, and the effect of FAA regulations on our ability to convey the property and receive compensation.

Council had a strong reaction to this bill at last month's meeting, and the members of our delegation have been advised that Council opposes this bill. We are advised that a proposed committee substitute (PCS) is being developed, but have not seen any alternative language.

C. Merger of Water System/Sewer System: To the surprise of practically everyone, a bill was introduced on May 5 (the day after NCLM Town Hall Day) that, though crafted as general legislation, would apply only to the City of Asheville. The bill requires the City to convey the water system to MSD.

This bill has attracted a lot of attention from the League of Municipalities, and other legislators, as well as the local media. Again, this forced conveyance appears to be without compensation, and we are investigating whether this can be legally done. The League of Municipalities has advised us that it will oppose the bill.

III. Other Bills of Interest. With the filing deadlines now passed, the volume of bills being introduced has dropped considerably. Some bills that were covered in my last report have attracted considerable interest, they include:

- HB 687 – Provide that when cities and counties enact ordinances or take administrative actions for which there is no statutory authority, and the ordinance or action is an abuse or authority, a successful plaintiff may recover attorney fees.

- HB 652 – Property Owners Protection Act. Award attorney fees to successful litigants in land use cases against local government.

The issue with these bills is that they could potentially result in the award of attorney fees any time a legal case is resolved against a local government. Under existing law, local governments (and employees and officials) have some ability to exercise professional judgment in carrying out their duties. These laws would have the effect of limiting that ability. This would apply in the administrative (code enforcement) as well as legislative (ordinance policy adoption) contexts. The League of Municipalities strongly opposed these bills.

Upon inquiry of Councilman Bothwell, Mayor Bellamy explained Senate Bill 183. In summary, the legislation would dramatically expand the allowable cutting of trees along public roadways in front of billboards and allow clear cutting in front of existing billboards in our communities. In addition, it would limit our ability as cities and citizens to protect the appearance of our communities. Specifically, trees and vegetation could be cleared in a 380-foot zone around billboards outside of cities and a 340-foot zone in cities along interstates and freeways, an increase from the current 250-foot cut zone. The bill would prohibit enforcement of local tree ordinances in front of billboards along interstates and federally assisted highways. She said that trees and green spaces are more valuable to our community than increasing the prominence of billboards. Protecting our neighborhoods' appearance reflects the values of our citizens and the message we want to project to our businesses and our visitors. She said the Tree Commission has also asked Council to watch this bill carefully. Councilman Bothwell then moved to instruct the City Attorney to watch this legislation and offer the City's opposition to Senate Bill 183. It was the consensus of Council to have City Attorney Oast provide information to Council on this legislation.

At Councilman Smith's request, Councilman Bothwell, liaison to the Sustainable Advisory Committee on Energy & the Environment, said that he would have them review House Bill NC Saves legislation and provide Council with a recommendation.

Councilman Smith expressed concern over House Bills 687 and 652, noting that it will be taxpayer dollars used to defend the City of Asheville.

Mayor Bellamy updated the Council on a motion that passed the Metropolitan Sewerage District (MSD) Board of Directors. She said they voted last week to have the MSD Planning Committee study the issue of whether the City of Asheville's water system should be consolidated with MSD. She did not support the motion, or the legislation. She spoke with Representative Moffitt and he did indicate that he would amend the bill to have it be a study bill; however, that has not happened. He felt it would be appropriate for Council to send a letter to our legislators that we oppose our water system being given to MSD.

Councilman Davis supported sending a letter to our legislators in addition to having an Opinion Editorial in the newspaper.

Councilman Russell, member on the MSD Board, said the reason the Board sent this to the MSD Planning Committee was simply to have the Planning Committee respond back to the Board with what they think about this idea. Board members can speak individually or they can

have the Board come up with a position to say that MSD is not in a position to study consolidation. MSD does not have the funds to purchase and acquire the City's water system. He said the MSD Planning Committee will probably come to the conclusion that we should just watch the bill and see what happens. It is his understanding that the motion was not to MSD study the consolidation, but to have the MSD Planning Committee recommend to the Board their thoughts about the bill.

Mayor Bellamy noted that MSD Chairman Aceto stated that MSD is going to study this issue should the City's water system become a part of MSD, separate and apart of this bill passing, because this has come up previously. She felt City Council needs to take a position that opposes the State taking our water system and consolidating it with another entity, especially with no City input. She felt the City should write a letter to our legislators stating our strong opposition. There are other bills introduced that we did not react to and they are becoming law.

Councilwoman Manheimer felt we need to voice our concern about the bill. She felt Council should consider engaging a lobbyist so we can have someone represent Asheville. It was the consensus of Council to have the Planning & Economic Development Committee study the idea of engaging a lobbyist with information provided by City staff regarding costs, lobbyist recommendations and expectations.

Vice-Mayor Newman said that the letter should point out the City's significant investments made in modernizing the water system; that there are already extensive legislative regulations on the water system to ensure that the revenues to the system are reinvested in the system; that City taxpayers over many decades have invested in the system including the acquisition of over 20,000 acres of land so that the City of Asheville is in the fortunate position of having one of the most pristine drinking water sources in the United States; that the City is open to a range of different ways to work with the County and other partners on service delivery, but that any major study of that should be based on consultations and not outside groups from any level initiating that that single-handedly.

Councilwoman Manheimer moved to authorize Mayor Bellamy to send a letter to our legislators expressing our strong opposition to the bill transferring the City's water system to MSD, with a copy of said letter being sent to MSD. Said letter to include points outlined by Vice-Mayor Newman. This motion was seconded by Councilman Smith and carried unanimously.

Rev. Christopher Chiaronmonte urged Council to oppose this legislation.

**B. ORDINANCE NO. 3981 - ORDINANCE ADOPTING THE FISCAL YEAR 2011-12 ANNUAL OPERATING BUDGET**

Administrative Services Director Lauren Bradley said that this is the consideration of an ordinance adopting the Fiscal Year 2011-12 Annual Operating Budget.

The Fiscal Year 2011/2012 Proposed Annual Budget was formally presented to City Council on April 26, 2011. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Proposed Budget along with a notice of the Public Hearing was published on April 29 and May 6, 2011. City Council conducted a public hearing on the Proposed Budget on May 10, 2011.

***Operating Budget Adjustments***

The net proposed FY 2011/2012 operating budget presented to City Council on April 26th was set at **$132,360,547**, including a General Fund appropriation of **$87,549,955**. Since the Proposed Budget was presented to City Council, there have been three adjustments that have altered the total of the budget that is presented tonight for Council adoption.

1) **Recycling Program Enhancements**: At its May 10, 2011, meeting, Council approved enhancements to the household recycling program that include the purchase of 95 gallon containers and the implementation of a recycling rewards program. The net annual operating cost of these program enhancements is expected to be approximately $213,000. To fund this additional cost, Council approved an increase in the household recycling of $0.65 per month. Since the program enhancements and the fee increase will not take place on July 1, 2011, staff has only included a partial year's worth of revenue and expenses in the FY 2011/2012 operating budget. The amount added to the FY 2011/2012 operating budget totaled **$180,000.**

2) **Funding for the Asheville-Buncombe Regional Sports Commission:** Also at the May 10, 2011, meeting, Council approved the addition of **$45,000** to the FY 2011/2012 operating budget to provide support to the Asheville-Buncombe Regional Sports Commission. This funding will provide the Sports Commission the resources it needs to hire a full time Executive Director that will continue the work of creating, recruiting, and supporting sporting events in the community.

3) **COPS Hiring Program Grant:** After the Proposed Budget was presented to Council, the City received notification that it will receive a grant award under the Fiscal Year 2011 Federal COPS Hiring Program. In a separate action before Council tonight, staff is seeking approval to apply for COPS funding for 5 additional police officers. The COPS funding will pay for 100% of salary and benefit costs for these 5 officers for the first three years of their employment. The City will be responsible for funding the officers beginning in year four. The grant award will be received in October. Staff is proposing that the **$129,000** in funding that was included in the Proposed Budget to hire three additional officers in association with the opening of the Hillcrest Bridge be removed from the Budget at this time pending receipt of the COPS grant funds in October.

The net result of these changes increases the operating budget by **$96,000** to **$132,456,547**, and the General Fund appropriation to **$87,645,955**. It should be noted that neither of the two changes mentioned above altered the proposed property tax rate of $0.42 per $100 of assessed value that was presented to Council on April 26th. Therefore, the property tax rate in FY 2011/2012 will remain the same as the current year tax rate. The proposed General Fund budget also includes no appropriation from the City's fund balance. All essential City services are continued in the Proposed Budget.

***Capital Improvement Program (CIP) Changes***

In association with the recycling program enhancements, staff has added $1.5 million to the FY 2011/2012 CIP to fund the purchase of the 95 gallon containers. This purchase will be debt financed and the debt service expenses are included in the operating budget adjustment mentioned above.

Public Works staff has also updated its cost estimates for two projects that were included in the FY 2011/2012 Proposed CIP that was presented to Council on April 26th. Staff is now anticipating that the Montford Street rebuild project will cost $493,000, and the Wild Cherry bridge replacement will cost $700,000. Both projects will be debt financed, and the new cost estimates do not change the overall CIP budget for FY 2011/2012, but staff wanted to highlight the changes to Council prior to budget adoption.

This action complies with the Fiscal Responsibility focus area of City Council's Strategic Operation Plan: Operate the City of Asheville's organization to the highest fiscal responsibility.

Pros:

- Ensures City's compliance with North Carolina General Statutes that require local governments to adopt a balanced budget ordinance by July 1 of each year.

- Proposed General Fund Budget is balanced with no tax rate increase or fund balance appropriation and all essential City services are continued.

Con:
- None.

As noted above, the Proposed FY 2011/2012 General Fund budget is balanced with no fund balance appropriation. Based on year-end projections for the current fiscal year and the planned expenses for FY 2011/2012, staff is estimating that at the end of FY 2011/2012 fund balance in the General Fund will equal 14.2% of expenses.

Staff requests that Council review the FY 2011/2012 Annual Operating Budget, including the changes noted above, and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance.

Councilman Bothwell moved for the adoption of Ordinance No. 3981. This motion was seconded by Councilwoman Manheimer.

At the request of Councilman Russell, it was the majority consensus of Council to have the Finance Committee quickly review our manufacturing rates regarding water rates to possibly create a manufacturing customer class within our rate structure in order to grow and preserve that section of our economy that is most sensitive.

Councilman Bothwell felt that we also need to discuss the larger concept of if it is appropriate to use water rates in order to attract business and provide jobs. He felt that development is going to find us because we are a great city.

Vice-Mayor Newman said that thinking long-term we are clearly moving towards a more conservation oriented water structure. In the far future, there is the potential that the City might need to construct an additional water treatment plant. He would like for Council to consider making a policy goal that in our long-term management plan, if possible, we want to avoid the need to construct an additional water treatment facility in our region. The two reasons for that goal are (1) water lines themselves will require huge capital investments and building new is extremely expensive; and (2) energy consumption reduction over time as there are enormous electricity demands spent on water production and water distribution.

Councilman Bothwell said that in the short term rates may play a role in whether or not businesses want to come to Asheville, but it is the truth that we are experiencing globally a shortage of fresh water. The fact that we have plentiful water will be an attraction to the many industries in the longer-term future. Nudging businesses toward conservation policy helps us preserve that very valuable resource that businesses will look for.

Councilman Davis felt to not make plans for another site for water production would be a mistake. He felt we need to leave that door open. We may be the region's best supply of water, but as drinkable water becomes more scare, then our assets become more valuable.

Vice-Mayor Newman said his goal is just an idea that Council might want to look at. If the demand is there, it is our responsibility to meet that demand. He just doesn't want it to be a foregone conclusion that we are going to build a new water treatment plan, if we can make some smart decisions and avoid the $40 Million capital expense.

Mayor Bellamy asked the Finance Committee to consider the fact that even though the City's budget runs from July 1 – June 30, most companies do not and when we implement our fees or rate increases mid-year, they are scrambling to keep their budgets intact. She felt we need to let individuals and companies know in advance that the City will increase rates so people can plan and budget for it. She said that she could not support the budget for the following

reasons (1) no salary/cost of living increase for City employees, especially for those who are on the lower end of the salary scale and especially with the heath care cost increase; (2) closure of the East Asheville Community Center will harm our community; (3) even though we have seen a decline in building activity we have not seen the proportionate same decline in the Building Safety budget; (4) studying a trolley system downtown should not be a top priority; (5) it is not transparent to the public of the City's services and the costs for those services; (6) Council's policy is a 15% Fund Balance, but yet another year we are below that threshold at 14.2%; (7) even though the proposed budget shows we are transferring $500,000 from the Parking Fund to Transit and $383,000 from the General Fund to Transit, we are making seniors and those with disabilities (through deletions of routes) have to walk further to catch a bus; and (8) increase of the recycling fee when Asheville is already one of the most successful recycling cities in our State. She felt Council must consider the number of individuals in our community that live below the poverty level and look at our policies and practices on what it costs to live in our community.

Councilman Bothwell felt that only through a tax increase can we address some of the Mayor's concerns and he would lend that support.

Councilman Russell would not support a tax increase.

Vice-Mayor Newman asked for a friendly amendment to the motion to encourage the City Manager to find resources for irrigation system improvements at the Golf Course next fiscal year as he felt it is a cost effective investment that will pay for itself over a short period of time. Councilman Bothwell and Councilwoman Manheimer accepted the friendly amendment.

Mayor Bellamy felt we should look at privatizing the Golf Course.

Councilman Davis was also concerned that City employees will not receive a cost of living increase for the third year in a row. He hoped that if we do see a revenue increase in the upcoming year that a cost of living increase be one of the first things we consider.

Councilman Bothwell said that citizens need to be educated on what can be recycled as they will save on tipping fees.

Councilman Smith said that per capita spending in the City of Asheville is lower today than it was 10 years ago. That speaks a lot to efficiency, innovation and creativity in government. He supported Council's goal of 15% Fund Balance noting that the 14.2% this year reflects the economies realities. Should some of these revenues increase, his top priorities would be (1) return to the 15% Fund Balance; (2) consider City employee salaries; and (3) figure out how to get back to the 2008-09 levels of the Housing Trust Fund ($600,000). Regarding transit, despite rising fuel costs, transit is being funding at about the 2008-09 budget level and that speaks a lot to Transportation Department. They must figure out how to maintain the system despite the fact that gas is $3.85/gallon and the users continue to demand exemplary service. The Transit Master Plan implementation is designed to make whole system more reliable and more convenient and for greatest number of people. As the Plan goes forward, we are going to be able to improve the system noticeably for everyone in Asheville, while keeping the operating costs basically flat. Regarding raising revenue, he is not in favor of a tax increase; however, he is in favor of a more vigorous and robust approach towards helping our legislators understand the need for us to get to the state average on the occupancy tax in Asheville.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

The motion made, and amended, by Councilman Bothwell and Councilwoman Manheimer and carried on a 6-1 vote, with Mayor Bellamy voting "no".

**ORDINANCE BOOK NO. 27 – PAGE 60**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 11-104 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION**

Vice-Mayor Newman said that the terms of Diane Duermit and Hillary Cole, as members on the Asheville-Buncombe Historic Resources Commission, expire on July 1, 2011. In addition, there currently exists a vacancy left by Ms. Amanda Warren until June 1, 2012.

At the May 10, 2011, City Council meeting, it was the consensus of Council to interview Brendan Ross, Brian Cook, Allen Currens and Randall Hall. Mr. Hall asked that his name be removed from the consideration at this time.

Also at the May 10 meeting, City Council reappointed Hillary Cole to serve an additional three-year term, term to expire July 1, 2014, or until her successor has been appointed.

After Council spoke highly of the candidates, Brendan Ross received 5 votes, Brian Cook received 6 votes, and Allen Currens received 3 votes. Therefore, (1) Brian Cook was appointed as a member of the Asheville-Buncombe Historic Resources Commission to fill the unexpired term of Ms. Warren, term to expire July 1, 2012, or until his successor has been appointed; and (2) Brendan Ross was appointed to serve a three year term, term to begin July 2, 2011, and expire July 1, 2014, or until her successor has been appointed.

**RESOLUTION BOOK NO. 34 – PAGE 17**

**B. RESOLUTION NO. 11-105 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS**

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that the term of Lou Bissette, as a member on the Metropolitan Sewerage District (MSD) Board, expired on January 19, 2011.

The following individual applied for the vacancy on the MSD Board: Barbara Field.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended appointing Councilwoman Esther Manheimer, explaining her qualifications.

Mayor Bellamy pointed out that Mr. Bissette is currently Chairman of the MSD Planning Committee that has been recently directed to study the issue regarding Asheville's water system. Vice-Mayor Newman recalled Council extended Mr. Bissette's term until he finished work on the water extension lines. Since that has happened, the Boards & Commission's Committee felt his replacement is due.

Councilman Russell spoke highly of Mr. Bissette's six years of service to the MSD Board.

Councilman Russell moved to appoint Councilwoman Esther Manheimer to serve a three-year term, term to begin immediately and expire on January 19, 2014, or until her successor has been appointed. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 18**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mayor Bellamy said that the Buncombe County Board of Elections has asked the City if they have any suggestions for a location for the early voting site in east Asheville. It was the consensus of Council that they not be involved in the specific location of early voting sites as they don't want to give the appearance of a conflict of interest. They did request that the site be generally convenient. They did note that, as an option suggested by the Board of Elections, Kenilworth Presbyterian is a viable location and amenable to Council.

Dr. Milton Byrd, Mr. Lisa Landis and Rev. Christopher Chiaronmonte spoke to the need of public access via the WNC Community Media Center.

Ms. Dixie Barkdoll was opposed to the auditor who will be performing the Police Department audit.

Mr. Mark Cates commended the Council on their vote for the budget. Council's projection of a 3% increase in sales tax revenue is good news and was pleased that Council believes the economy will improve and grow.

Councilman Bothwell was pleased that the City of Asheville is in good standing regarding the HUD home block grant monies.

Mayor Bellamy reminded the community of Memorial Day activities.

The City was served with a Complaint on May 2, 2011, which is generally described as follows: C&C Business Services, Inc. v. City of Asheville. The nature of the proceeding is a complaint for breach of contract, based on Jeff Coffey's janitorial service contract. This matter will be handled in-house.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:56 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – May 31, 2011 – 6:30 p.m.
Vance Elementary School

Community Meeting – West Asheville

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

Mayor Bellamy opened the meeting, welcomed the audience and introduced City Council members.

Urban Planner Alan Glines gave a brief overview and history of the process of the Haywood Corridor Plan. Since 2002 the Haywood Road Corridor Committee has focused on opportunities and constraints along the corridor. Broad areas for improvement were identified, such as safety; traffic; road layout; encouraging and preparing for new development; and streetscape improvements. Since then a lot of changes have taken place, increasing the sense of community and the west Asheville identity. In 2006, the Committee sent a survey to property owners, neighbors and business owners to understand their preferences for new development when it comes along the corridor. The results were seeing Haywood Road as a neighborhood and pedestrian friendly local commercial corridor serving the daily need of residents and visitors. People wanted new development to accommodate an expanding pedestrian population. Also along the corridor the interest of bicycle commuting and transit ridership has been noticeably growing. Staff then revisited the effort to organize a plan for Haywood Road in 2009. Because there are two separate areas of the Central Business District along Haywood Road (about 60 parcels), adjustments were made, as most people agreed to limit the height of buildings and also provide for a planted buffer for screening based on the height of the development adjacent to residential zones. The Committee has reconvened to develop a vision plan and initiate zoning changes for the corridor. We hope to have a plan developed by late fall.

Ms. Leslie Faye, representing the Haywood Road Corridor Committee, noted that the Committee has been meeting as a group since 2003 and recently they have set their goals for 2001 to develop a vision plan that could be used as a key tool to help direct future development of the corridor and maintain the authenticity of our community preferences. The Committee is addressing the following issues: zoning; traffic; economic development and sustainability; safety; and historic preservation. She highlighted the following items in their vision plan: (1) zoning and land use; (2) economic development issues; and (3) transportation related issues, such as parking, bike lanes, increased use of public transportation, and pedestrian density. Mr. Dan Kostalec, a transportation planner and west Asheville resident, compiled a draft safety and pedestrian assessment called "Haywood Road and Active Living" for most of Haywood Road. Volunteers from the Bike and Pedestrian Task Force measured the width of sidewalks, cross-slopes of sidewalks, and locations of signs, power poles and street crossings and suggested several solutions. She thanked Mr. Alan Glines for their ultimate success and hoped to be able to retain that leadership until their plan if finalized.

Mr. Hugh Monro, Treasurer of the West Asheville Business Association, explained that the Association's goal is the improvement of the west Asheville community. He explained how they support a variety of community organizations and facilitate meetings to help find common goals and solutions for the entire west Asheville community.

Weed & Seed Initiative Coordinator for the West Riverside Operation Rebecca Byrn gave a brief overview of the Weed & Seed program, which strategy seeks to improve the quality of life of residents in the targeted area by weeding out crime and seeding positive community change through resident leadership, support for youth and job training programs, and the creation of sustainable partnerships. They are heading into their fifth and final year of funding by the U.S. Dept. of Justice. They focus on three components (1) law enforcement/community policing; (2) prevention/intervention/treatment; and (3)

neighborhood restoration. She shared some significant accomplishments, such as (1) reduction of crime in the area (21% decrease in robbery; 34% decrease in violent crime; 14% decrease in aggravated assault; 60% decrease in drug calls for service; and 99 individuals have been charged as habitual felons); (2) two Safe Babysitter Certification trainings through the Red Cross for youth; and (3) seven paid interns for a film project addressing gun violence. Numerous neighborhood restoration projects have also been funded and leveraged by the Weed & Seed initiative. They have leveraged through community partnerships $2.3 Million in funding which has benefited the West Riverside community. They have also supported grassroots organizations that have a significant presence and impact in the community.

Mr. DeWayne Barton, President of the Burton Street Community Association, explained their active association and gave a brief update on their recently completed neighborhood plan.

Ms. Allison Smith, representing the Housing Authority, was pleased to report success stories about Pisgah View Apartments, including the renovation of Building 16 which now operates as a community resource center, peace garden, installation of energy efficient windows, to name a few.

Mr. Isaac Coleman, representing the Housing Authority, was also pleased to report success stories about Deaverview Apartments, including new siding, new windows and new toilets, to name a few.

Director of Transportation Ken Putnam noted some system-wide changes arising out of the Transit Master Plan approved by City Council on October of 2009. Some include branding the system; changing all route to improve on-time performance; combining day and evening service; increasing frequency along five main corridors; eliminating dial-a-ride service; reducing the number of route deviations; streamlining bus stop locations; adding transfer points outside of the downtown area; creating two cross-town routes; and adding two new service areas. Specifically in west Asheville, they are working on (1) increasing frequency along Patton Avenue; (2) increasing frequency along Haywood Road; (3) new cross-town route between Bleachery Boulevard and North Louisiana Avenue; and (4) new service to the Land-of-Sky on Leicester Highway.

Mayor Bellamy then opened up the meeting for questions. Questions/comments responded to consisted of: Friends of Hominy Creek Greenway vision plan; need for better traffic enforcement when cars go straight from the turning lane on Haywood Road/Burton Street intersection; traffic concerns regarding crosswalks; suggestions of one-way streets during specific times of day; need for supervision at Burton Street Community Center; question if Biltmore Estate plans to purchase Pisgah View; need for more bus shelters; bus shelter at Asheville Mall needs windows replaced; history of Sulphur Springs Road; what is the budget for tourism in the City and how much is allocated for west Asheville; appreciation for climbing lane on Clingman Avenue and purchase of The Waller Tract; suggestion to help fund local currency projects; and need for more trash cans along Haywood Road.

Mayor Bellamy was pleased to report some of the major investments in west Asheville, consisting of the new fire station and the purchase of The Waller Tract. She noted the great after-school programs at Pisgah View Apartments, Project March (Make a Right Choice); and programs sponsored by the YWCA. She pointed out that the rezoning of 626 Haywood Road will be coming before Council soon, the single-family homes on the Brotherton site; and urged caution when the Malvern Hills pool opens. She suggested several resources for volunteers to the Friends of Hominy Creek Greenway. She suggested citizens attend the upcoming Citizens Police Academy and consider serving on one of the many City boards & commissions. She also explained how the Buncombe County Tourism Development Authority (TDA) has the responsibility for funding tourism from hotel taxes. Vice-Mayor Newman also suggested the west Asheville community develop a proposal and submit it to the TDA for possible funding, which proposal should benefit the local community and attract tourists (greenways, for example).

Mayor Bellamy and Council members expressed their appreciation for the community involvement.

Mayor Bellamy asked for a moment of silence in memory of former Mayor Richard A. Wood Jr.

At 8:00 p.m., Mayor Bellamy adjourned the meeting.

Magdalen Bourleson
CITY CLERK

MAYOR

Tuesday – June 14, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilwoman Manheimer gave the invocation.

**I. PROCLAMATIONS:**

**A. PRESENTATION OF THE AMERICAN PUBLIC WORKS ASSOCIATION HW KUEFFNER SERVICE AWARD FOR 2011**

Mayor Bellamy said that this award is presented annually by the American Public Works Association – North Carolina Chapter to recognize individuals who are employed in public works in a position below the supervisory level for outstanding achievement in local government service. She introduced Mr. Russell Byrd, Awards Chairman from the City of Winston-Salem, and Mr. Mr. Keith Pugh, Chapter President from the City of High Point, who were pleased to present the American Public Works Association HW Kueffner Service Award for 2011 to Ms. Liz Calloway.

**B. CAROLINA RECYCLING ASSOCIATION AWARD TO CITY OF ASHEVILLE**

Mayor Bellamy said that the City of Asheville is honored to receive the annual Carolina Recycling Association Award in the Local Government category. Through receiving this award, the City of Asheville is being recognized by the Carolina Recycling Association as having one of the most successful local municipality recycling programs where we rank highest in the state with 30% waste stream diverted. The City of Asheville also has highest community participation rate in the state of 80%. The City of Asheville government has increased recycling in City building by 19% increase since program began in 2000 thru 2010. She then introduced Ms. Holly Bullman, Past President of Carolina Recycling Association who presented the Carolina Recycling Association Award to Ms. Rachel Rogers, Sustainability Outreach Specialist.

**C. PROCLAMATION PROCLAIMING JUNE, 2011, AS "NATIONAL LESBIAN, GAY, BISEXUAL, AND TRANSGENDER HISTORY MONTH"**

Mayor Bellamy read the proclamation proclaiming June, 2011, as "National Lesbian, Gay, Bisexual, and Transgender History Month" in the City of Asheville. She presented the proclamation to Mr. James Dye, who briefed City Council on some activities taking place during the month.

**D. PROCLAMATION PROCLAIMING JUNE 27, 2011, AS "NATIONAL HIV TESTING DAY"**

Mayor Bellamy read the proclamation proclaiming June 27, 2011, as "National HIV Testing Day" in the City of Asheville. She presented the proclamation to Mr. Michael Harney and Ms. Jennifer Poore, who briefed City Council on some activities taking place during the day.

**II. CONSENT AGENDA:**

Mayor Bellamy requested that the Consent Agenda include an amendment to the minutes of the April 26, 2011, meeting to include specific comments regarding Fund Balance.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 24, 2011, AND THE COMMUNITY MEETING HELD ON MAY 31, 2011**

**B. RESOLUTION NO. 11-108 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES FOOTBALL GAME EVENTS ON JUNE 18, JULY 2, JULY 16 AND AUGUST 13, 2011**

**RESOLUTION NO. 11-109 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SAFARI ON JUNE 23, 2011**

**RESOLUTION NO. 11-110 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT RIVERFEST ON AUGUST 13, 2011**

**RESOLUTION NO. 11-111 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT BEER CITY CUP ON SEPTEMBER 3-4, 2011**

**RESOLUTION NO. 11-112 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BREWGRASS FESTIVAL ON SEPTEMBER 17, 2011**

**RESOLUTION NO. 11-113 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT BLUE RIDGE PRIDE ON OCTOBER 1, 2011**

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Grizzlies Football Game Event on June 18, July 2, July 16, and August 13, 2011; the Mountain Safari on June 23, 2011; Riverfest on August 13, 2011; the Beer City Cup on September 3 and September 4, 2011; the Brewgrass Festival on September 17, 2011; and Blue Ridge Pride on October 1, 2011.

- Asheville Grizzlies has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Asheville Grizzlies Football Game Event and allow for consumption at this event.

  The Asheville Grizzlies Football Game Event will be held on Saturday, June 18, July 2, July 16, and August 13, 2011 from 5:30 p.m. – 11:00 p.m., within the boundaries of Memorial Stadium as per the event area limits referenced on a site map.

- Friends of the WNC Nature Center has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Mountain Safari and allow for consumption at this event.

  The Mountain Safari will be held on Thursday, June 23, 2011 from 5:30 p.m. to 9:30 p.m. within the boundaries of the WNC Nature Center facility as per the event area limits referenced on a site map.

- Riverlink has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at Riverfest and allow for consumption at this event.

  Riverfest will be held on Saturday, August 13, 2011 from 1:00 p.m. to 7:00 p.m. within the boundaries of French Broad River Park, as per the event area limits referenced on a accompanying site map.

- The Western North Carolina Soccer Foundation has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at the Beer City Cup and allow for consumption at this event.

  The Beer City Cup will be held on Saturday, September 3, 2011 from 4:00 p.m. to 10:00 p.m. and Sunday, September 4, 2011 from 11:00 a.m. to 10:00 p.m. within the boundaries of Memorial Stadium as per the area limits referenced on a site map.

- Big Brothers Big Sisters WNC has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Brewgrass Festival and allow for consumption at this event.

  The Brewgrass Festival will be held on Saturday, September 17, 2011 from 12:00 p.m. to 7:00 p.m. within the boundaries of Martin Luther King Jr. Park, as per the event area limits referenced on a site map.

- Blue Ridge Pride, Inc. has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at Blue Ridge Pride and allow for consumption at this event.

  Blue Ridge Pride will be held on Saturday, October 1, 2011 from 12:00 p.m. to 6:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green, Reuter Terrace, the City-County Parking Lot and within a designated area of Spruce Street between the intersections of College Street & Court Plaza, as per the area limits referenced on a site map.

These actions have no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for the Asheville Grizzlies, Friends of the WNC Nature Center, Riverlink, Western North Carolina Soccer Foundation, Big Brothers Big Sisters of WNC, and Blue Ridge Pride, Inc.

Con:

- Potential for public safety issues

There is no fiscal impact.

City staff recommends City Council adopt the resolutions authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Grizzlies Football Game Event, the Mountain Safari, Riverfest, the Beer City Cup, the Brewgrass Festival, and Blue Ridge Pride.

**RESOLUTION NO. 11-108 - RESOLUTION BOOK NO. 34 – PAGE 23**
**RESOLUTION NO. 11-109 - RESOLUTION BOOK NO. 34 – PAGE 26**
**RESOLUTION NO. 11-110 - RESOLUTION BOOK NO. 34 – PAGE 29**
**RESOLUTION NO. 11-111 - RESOLUTION BOOK NO. 34 – PAGE 32**
**RESOLUTION NO. 11-112 - RESOLUTION BOOK NO. 34 – PAGE 35**
**RESOLUTION NO. 11-113 - RESOLUTION BOOK NO. 34 – PAGE 38**

**C. RESOLUTION NO. 11-114 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH STARBOARD CONSULTING FOR THE WATER RESOURCES SOFTWARE REPLACEMENT PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Starboard Consulting, in an amount not to exceed $350,000, for the Water Resources software replacement.

Water Resources currently uses Maximo Version 6.1 as the department's Computerized Maintenance Management Software (CMMS). The CMMS is used primarily as a work order system to monitor and maintain the department's assets. This project will consist of: (1) upgrading Maximo from Version 6.1 to 7.1; and (2) improving and/or adding GIS mapping capabilities by upgrading Syclo Mobile Work Manager and implementing Maximo Spatial. The department's need to replace was due its life cycle being completed and to support requirements from IBM, who has been reluctant to provide support until Maximo is upgraded to the current version.

On May 2, 2011, Water Resources received three (3) proposals for the project in response to the Request for Proposals (RFP).

Vendors responding were:

1. Banetti – Miami, Florida
2. EMA, Inc. – Longwood, Florida
3. Starboard Consulting – Longwood, Florida

A review team comprised of Water Resources and Information Technology staff reviewed each proposal and rated them based on eight (8) categories (i.e. qualifications, software support, understanding of scope, cost, and project schedule).

The vendors' average scores were:

1. Banetti – 302.5
2. EMA, Inc. – 314.6
3. Starboard Consulting – 348.8

Starboard Consulting has been selected to implement the system or software replacement based on receiving the highest rating from the review team. It is their project team members' familiarity and knowledge of the department's system configuration that earns them the highest rating. The members of this team were the majority of the project members who installed the department's Maximo system in 2006.

Banetti, although the lowest bidder on the project, was not selected because: (1) of the lack of detail provided in their proposal; and (2) they are not listed as an IBM Tivoli Accredited Business Partner, which raises concern about their level of support and deployment.

This project is part of City Council's strategic plans to maintain and improve city infrastructure.

Pro:
- Approval of the bid award will allow Water Resources to complete the necessary replacement of the work order system in order to ensure its functionality and support from IBM.

Cons:
- If the bid is not awarded, then Water Resources will risk losing product support from IBM.
- The vendor selected is not the lowest bidder, but they are the highest-rated vendor.

Water Resources has $350,000.00 specifically reserved for this project. The proposal submitted by Starboard Consulting, which allows for optional services, is summarized as follows:

| | |
|---|---|
| Project Budget | $350,000.00 |
| Starboard Consulting, Base Bid | $283,808.00 |
| Optional Services | $ 47,200.00 |
| Starboard Consulting Total Bid | $331,008.00 |
| Amount Remaining After Total Bid | $ 18,992.00 |

City staff recommends City Council approval of the City Manager to enter into an agreement with Starboard Consulting, in an amount not to exceed $350,000, for the Water Resources software replacement project.

**RESOLUTION BOOK NO. 34 – PAGE 41**

**D. RESOLUTION NO. 11-114 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERLOCAL AGREEMENT WITH BUNCOMBE COUNTY THAT WILL ALLOW CONSTRUCTION AND MAINTENANCE OF A SIDEWALK ON NORTH LOUISIANA AVENUE IN THE EMMA COMMUNITY**

Summary: The consideration of a resolution authorizing the Mayor to sign an interlocal agreement with Buncombe County that will allow construction and maintenance of a sidewalk on North Louisiana Avenue in the Emma community.

Several years ago, a group of citizens formed a group known as A Safer Walk for Emma, and engaged the City, the county, and the N.C. Dept. of Transportation (NCDOT) in discussions about the need for sidewalks in the Emma community. From the outset, it was clear that partnerships would be needed to construct and maintain sidewalks in the city's extraterritorial jurisdiction (ETJ).

As a follow-up to these discussions, in February 2008 City Council authorized City staff to act as the lead agency to apply for and receive federal grants to construct a sidewalk on North Louisiana Ave. near Emma Elementary School. The City now has all of the grant funds necessary to construct the sidewalk. Planning and design are complete and the project is ready to bid.

Because the sidewalk is outside the City limits, Buncombe County has agreed to accept ownership of the sidewalk, which includes responsibility for maintenance. Buncombe County is scheduled to approve the interlocal agreement this month. At a future date, the County may choose to hire the city to perform the actual maintenance.

To summarize the interlocal agreement, the City will continue to act as lead agency to administer federal funds and oversee construction of the sidewalk. The county will sign the necessary agreements with the NCDOT to accept ownership of the sidewalk once it is complete.

This action complies with the City Council Strategic Operating Plan in that this is a project to improve pedestrian infrastructure in a low-income community using federal funds. North Louisiana Avenue is on the city's pedestrian thoroughfare plan. In addition, this project implements one of the Safe Routes to School projects.

Pros:

- This project serves as an example of effective interlocal cooperation to provide needed infrastructure improvements.
- This construction project is funded with 100% federal funds, with no local match required.

Con:

- Staff time is required to administer the project.

This project requires staff resources to administer the project, but the construction is fully funded by a federal grant and does not require any City funding.

City staff recommends City Council adopt a resolution authorizing the Mayor to sign an interlocal agreement with Buncombe County for maintenance of sidewalk in the Emma community.

**RESOLUTION BOOK NO. 34 – PAGE 43**

**E. RESOLUTION NO. 11 -116 - RESOLUTION ACCEPTING TOWN SQUARE BOULEVARD, THETFORD STREET, WALTERSTONE ROAD AND STAMFORD STREET AS CITY-MAINTAINED STREETS**

Summary: The consideration of a resolution to accept Town Square Boulevard, Thetford Street, Walterstone Road, and Stamford Street as city-maintained streets.

Code of Ordinances sec. 7-15-1(f)(4)a requires that streets dedicated for public use be accepted by resolution of the City Council. The developer submitted a written request on April 21, 2011 asking the City to accept the subject streets as city-maintained streets.

- Town Square Boulevard from Thetford Street to Schenck Parkway is a developer-constructed street that has an average street width of 42 feet (center median) with 24-inch curb and gutter, a length of 0.18 mile, and a variable right-of-way width of 19 feet to 32 feet.

- Thetford Street from Stamford Street to Schenck Parkway is a developer-constructed street that has an average street width of 23 feet with 24-inch curb and gutter, a length of 0.33 mile, and a variable right-of-way width of 23 feet to 45 feet.

- Walterstone Road from Thetford Street to Stamford Street is a developer-constructed street that has an average street width of 22 feet with 24-inch curb and gutter, a length of 0.14 mile, and a variable right-of-way width of 22 feet to 39 feet.

- Stamford Street from Thetford Street to Schenck Parkway is a developer-constructed street that has an average street width of 22 feet with 24-inch curb and gutter, a length of 0.17 mile, and a variable right-of-way width of 22 feet to 36 feet.

Typically a street right-of-way includes the entire street footprint including sidewalks (for example, in the central business district, the right-of-way would extend from back of sidewalk or building edge to back of sidewalk or building edge). In this case, the variable right-of-way for all four streets is essentially curb to curb and only includes the actual street footprint. The sidewalks will be privately-maintained. A 5-foot maintenance easement is provided along the frontage of the right-of-way boundaries for public utility purposes.

Transportation Department staff and Public Works Department staff inspected the subject streets and determined that they were constructed according to current standards as indicated in the City of Asheville's Standard Specifications and Details Manual. In addition, the developer's engineer has furnished a signed and sealed letter verifying that the subject streets were constructed to current City of Asheville standards.

Following City Council's approval of this resolution, the subject streets will be added to the official Powell Bill List.

This action complies with the City Council 2010-11 Strategic Operating Plan within the Sustainable Focus Area by accepting street infra-structure to help support the healthy growth of the City.

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help maintain the streets.
- The streets provide access and connectivity in a residential/commercial community.

Con:

- Powell Bill Funds will not cover 100% of the total cost to maintain the streets.

There will be no initial financial impact to the City, although the responsibility of maintenance belongs to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the streets. Based on current allocation rates, the City will receive approximately $1,200 in Powell Bill Funds from these streets.

Staff recommends that City Council accept Town Square Boulevard, Thetford Street, Walterstone Road, and Stamford Street as city-maintained streets.

**RESOLUTION BOOK NO. 34 – PAGE 44**

**F. ORDINANCE NO. 3982 - BUDGET AMENDMENT TO REIMBURSE FIRE DEPARTMENT OVERTIME BUDGET**

Summary: The consideration of a budget amendment, in the amount of $94,282, to receive reimbursement from the N.C. Dept. of Crime Control and Public Safety and Asheville Buncombe Technical Community College (AB Tech) for overtime expenditures, which are related to the Asheville Fire Department's Regional Hazardous Materials Team and our partnership with AB Tech's Fire Academy.

The Asheville Fire Department has received reimbursement funds from the North Carolina Department of Crime Control and Public Safety and AB Tech. These funds have been received in FY 2011. The department utilizes General Fund money to pay for overtime for hazardous materials training and emergency responses throughout the Western North Carolina region as well as for instructors in AB Tech's Fire Academy. The North Carolina Department of Crime Control and Public Safety reimburse the City of Asheville for these expenditures related to regional hazardous materials responses. AB Tech reimburses the City of Asheville for expenditures related to AFD instructors in their fire academy. These funds that have been

received will be used to reimburse the overtime expenditures that have come out of the General Fund.

This action complies with the City Council Strategic Operating Plan in that it helps to proactively pursue funding opportunities through state and federal economic stimulus packages.

Pro:

- This action allows for reimbursement of overtime expenditures without utilizing city tax funds.

Con:

- None identified

These funds, which have been obtained through reimbursement payments from the North Carolina Department of Crime Control and Public Safety and AB Tech will be used to offset Fire Department overtime expenses.

City staff recommends City Council approve the budget amendment to receive these reimbursement funds.

**ORDINANCE BOOK NO. 27 – PAGE 66**

**G. ORDINANCE NO. 3983 - BUDGET AMENDMENT TO SUPPORT THE CAPACITY OF HOMELESS INITIATIVE PROJECT**

Summary: The consideration of a budget amendment, in the amount of $12,000, from Buncombe County to support the capacity of Homeless Initiative project.

In order to accommodate for the growing needs of the Homeless Initiative, Buncombe County has offered the project $12,000 to pay for AmeriCorps*VISTA and other contracted services. The positions would be dedicated to increasing the capacity of the Homeless Initiative and strengthening projects of the Homeless Coalition and Homeless Initiative Advisory Group.

The following outcomes would need to be met if funding is accepted:

*Retain AmeriCorps workers (or other workers) for up to 1,200 hours to support the Asheville-Buncombe Homeless Initiative, providing services for projects such as the SOAR disability project, Homeless Coalition, etc.*

This project meets the affordability goal objective to support initiatives to end homelessness. Accepting this funding will help the Homeless Initiative support the 10-Year Plan to End Homelessness process and collect data that can be used by the City Council when evaluating initiatives designed to end homelessness.

Pro:

- In tight budget times, funds to further the work of the Homeless Initiative can enhance the services it offers to the community.

Con:

- No apparent cons.

This will add $12,000 to the Homeless Initiative Budget. These additional funds will fully support the costs of the AmeriCorps or work-study personnel.

City staff recommends City Council adopt a budget amendment for, accepting the $12,000 awarded to the Homeless Initiative by Buncombe County for capacity building.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Russell moved for the adoption of the Consent Agenda, along with the amendment to the April 26, 2011, minutes. This motion was seconded by Councilman Davis and carried unanimously.

**III. PRESENTATIONS & REPORTS: None**

**IV. PUBLIC HEARINGS:**

**A. CONTINUATION OF PUBLIC HEARING TO CONSIDER CLOSING SEVERAL PORTIONS OF UNOPENED RIGHTS-OF-WAY AND CITY STREETS WITHIN THE MONTFORD COMMONS DEVELOPMENT AREA**

Mayor Bellamy said that she has received a request from Mr. Kyle Evans, representing Montford Commons, LLC, requesting a continuance until August 9, 2011, as they are still waiting for their HUD funding commitment. Therefore, Councilman Russell moved to continue this public hearing until August 9, 2011. This motion was seconded by Councilman Davis and carried unanimously.

**B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING A MODIFICATION THAT WOULD ESTABLISH THE PLANNING & ZONING COMMISSION AS THE FINAL APPROVAL AUTHORITY FOR ANY LEVEL II PROJECT OR MAJOR SUBDIVISION**

**ORDINANCE NO. 3984 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING A MODIFICATION THAT WOULD ESTABLISH THE PLANNING & ZONING COMMISSION AS THE FINAL APPROVAL AUTHORITY FOR ANY LEVEL II PROJECT OR MAJOR SUBDIVISION**

Mayor Bellamy opened the public hearing at 5:24 p.m.

Planning & Development Director Judy Daniel said that this is the consideration of a wording amendment to Chapter 7, Articles 3 and 5 of the Unified Development Ordinance (UDO), changing the approval body for Level II Projects and Major Subdivisions from the Technical Review Committee to the Planning and Zoning Commission. This public hearing was advertised on June 3 and 10, 2011.

This report outlines the changes to the UDO that are required to change the final approval of Level II projects and Major Subdivisions from the Technical Review Committee (TRC) to the Planning and Zoning Commission (Commission). This change has been discussed for over a year, and complements a similar change implemented for Level II projects in the downtown Central Business District (CBD) in conjunction with the recommendations of the Downtown Master Plan.

The proposal has been presented to a range of community and business groups, affected city departments, and boards and committees. There has been general support for the change, given the pressure sometimes put on technical staff to reflect public concerns about moderately large development projects. There has also been acknowledgement that this is a substantially expanded role for the Commission.

With this change, the TRC would cease to be the location for public discussion, but would continue to provide the vital technical reviews and conditions to the Commission. The TRC would continue to be open to the public, but public comment would be reserved for the Commission hearings. The staff report to the Commission would include the staff recommendations from the various departments. In practice, staff from most of those departments would very rarely need to attend the Commission meetings. Generally, Planning, Transportation and Stormwater staff members are the most regularly questioned by developer or residents who have concerns about a project.

The Commission would hold the required public hearing where the developer or members of the public could question the staff recommendations. The Commission would then determine whether to approve the subdivision or project, approve it with conditions outlined in the TRC staff report, possibly add conditions, or deny approval. Appeals to decisions of the Commission for Level II projects would be to the Board of Adjustment while appeals of Major Subdivisions and Subdivision Modifications would go to Superior Court.

One modification has been made as a result of the discussion at the Planning and Zoning Commission. The language has been updated to specify that changes would apply only to applications received after adoption, not to pending applications. The specific changes include:

**Sec. 7-3-5(a). Technical Review Committee.**
The changes are to sections 2, 3, and 5. With these changes the TRC will:

- Review and provide recommendations for (no longer approve or deny) preliminary plats for major subdivisions; as that role is delegated to the Planning and Zoning Commission (see below Sec. 7-5-8);

- Review and provide recommendations for (no longer approve or deny) requests for modifications to the subdivision standards; as that role is delegated to the Planning and Zoning Commission (see below Sec. 7-5-8 (c));

- Review and provide recommendations for (no longer approve or deny) site plans for proposed developments subject to Level II site plan review; as that role is delegated to the Planning and Zoning Commission (see below Sec. 7-5-9(b)).

**Sec. 7-5-8 (a). Major Subdivision Approvals.**
In changes (to section "d", "e", and "f") the role of the TRC is changed to a review for compliance with any applicable regulations and recommendation to the Planning and Zoning Commission. Appeals would be from the Commission to the Superior Court instead of from the TRC to the Commission. Permits approvals would be issued by the Commission (rather than the TRC) and still valid for two years from the date of approval.

**Sec. 7-5-8 (c). Subdivision Modifications.** In changes to sub-section "1" (approval authority) and "3" (conditions) requests for modifications to approved major subdivisions would continue to be reviewed by the TRC, but their recommendations would be forwarded to the Commission for action.

**Sec. 7-5-8(b). Plan approvals for Level II Site Plans.** In changes to section "4c" (action by TRC) the role of the TRC is changed to that of review for compliance, with forwarding to the Commission for action. In section "6" (formal review) a formal review of Level II site plans at the

Commission is established. In section "8" (appeals) the appeal of Level II decisions is made from the Commission to the Board of Adjustment, rather than from the TRC.

Pro:

- Moves the public comment element from technical staff review to a body of appointed officials, reducing the potential for political pressure on staff technical reviews.

Con:

- Adds a small amount of extra time to the approval process.

The Planning and Zoning Commission reviewed this modification at their May 4 meeting. After substantial discussion they voted 5-2 in support of the recommended changes. One general area of concern was the lack of a clause clarifying that the change would be applicable only to projects received after adoption of the change.

There is no discernable fiscal impact. Will result in a small decrease in work load for Development Services Center Planning staff, and add a small increase in work load for City Hall Planning staff (due to shift in the advertisement requirements for public hearings).

The staff recommends support for these changes to the zoning regulations.

Mr. Steve Rasmussen spoke in support of the amendment and urged Council to appoint a genuinely diverse range of people to the Planning & Zoning Commission.

Mayor Bellamy closed the public hearing at 5:32 p.m.

Councilman Bothwell noted that City Council will be holding an open interview process of Planning & Zoning Commission candidates.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith moved for the adoption of Ordinance No. 3984. This motion was seconded by Vice-Mayor Newman and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 70**

**C. PUBLIC HEARING TO CONSIDER REZONING A PORTION OF 36 MONTFORD AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY AND OFFICE DISTRICTS, WITH A HEAD OF MONTFORD OVERLAY, TO COMMUNITY BUSINESS I DISTRICT WITH NO OVERLAY**

**ORDINANCE NO. 3985 - ORDINANCE REZONING A PORTION OF 36 MONTFORD AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY AND OFFICE DISTRICTS, WITH A HEAD OF MONTFORD OVERLAY, TO COMMUNITY BUSINESS I DISTRICT WITH NO OVERLAY**

Mayor Bellamy opened the public hearing at 5:33 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone a portion of 36 Montford Avenue from RM-8 Residential Multi-Family Medium Density and Office Districts, with a Head of Montford Overlay, to Community Business I District with no Overlay. This public hearing was advertised on June 3 and 10, 2011.

The Chamber of Commerce moved to its new location on Montford Avenue in 2000 after assembling properties on Montford Avenue, Hill Street, and Gudger Street and constructing a

new office building and surface parking lot. The assembled parcels collectively included a variety of zoning districts including Residential Multi-family, Medium Density District (RM-8), Office, and Community Business I (CB-I). The differing zoning districts would not support a single office development that was envisioned for the Chamber and Conditional Use Rezoning was not widely used. The remedy at that time was to adopt and apply a special overlay limiting allowed uses, building size, building orientation, and site development, ensuring the community that the new Chamber development would be compatible with the rest of the historic Montford community. The site was developed using those Head of Montford Overlay District standards and the underlying zoning was not changed.

Recently the Chamber of Commerce has been approached by community members who would like to move an existing local farmer's market to this site in order to increase accessibility, size, and offerings at this more central location. The market currently operates on Wednesday afternoons at the French Broad Co-op parking lot and would retain the same operating schedule. The staff recognizes the merits of this opportunity and realized that the zoning should be consistent across the site to permit the farmer's market.

As a part of this proposal staff is recommending that the Head of Montford Overlay be removed from the parcel because it had a very specific purpose for the development of the new Chamber building. The overlay allows a much larger building in terms of square footage than would be allowed under CB-I. In addition, the overlay provides a limited list of land uses which is unusual because overlay districts typically describe the form and scale of buildings and not uses since that is covered in the underlying zoning district. Staff met with members of the Montford Neighborhood Association (MNA) who were initially concerned about removing the Head of Montford Overlay, and expressed their desire to bring the entire parcel under the Montford Historic District boundary. Currently only the portion of the parcel with the existing building is subject to the historic district standards. Due to the time constraints facing the Farm Market, the MNA determined to support the market, and pursue expansion of the Historic District separately. The neighborhood will be approaching the Chamber and the Historic Resources Commission about expanding the Montford Historic District as a part of a separate action. As an alternative to expanding the Historic District, revisions to the existing overlay could also be considered separately.

The proposed zoning change to CB-I for the entire site matches the zoning in place for the portion of the parcel where the Chamber of Commerce building is located. The intent of that zoning district is to provide areas for medium density business and service uses serving several residential neighborhoods. The zoning area may serve as a workplace for nearby residents and be sensitive to significant pedestrian activity.

The CB-I district is recommended over the two other existing districts which are more restrictive and allow fewer uses. Additionally, neither the Office, nor the RM-8 district allows farmer's markets. The Office District was developed to provide areas for small-scale office uses adjacent to residential uses; and may serve as a transition when residential areas convert to other uses or between residential and commercial areas. The Residential Multi-family, Medium Density District (RM-8) was set aside for a wide variety of medium density residential uses and limited non-residential development such as institutional uses normally found in residential areas.

Based on the above findings and the analysis provided, the staff finds this request to be reasonable because the area supports this type of zoning and development pattern.

This rezoning request was recommended for approval by a 5-0 vote by the Planning and Zoning Commission meeting on June 1, 2011. Four people spoke at the P&Z meeting; most speakers were supportive of the zoning change.

Pros:

- Provides consistent zoning for this single parcel.

- Proposed zoning will be compatible with trends and changes to zoning on nearby parcels.
- The zoning change is consistent with the goals of the neighborhood which by a future and separate action may include the Montford Historic District overlay.

Con:

- (Temporarily) removes a limited number of design standards from the property.

Staff supports the request to rezone the property to CB-I because the area supports this zoning pattern.

Mayor Bellamy closed the public hearing at 5:37 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Newman moved for the adoption of Ordinance No. 3985. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 76**

**V. UNFINISHED BUSINESS:**

**A. STATE LEGISLATIVE UPDATE**

City Attorney Oast said that since his last legislative update to Council (May 24), the following developments have occurred with respect to legislation that affects Asheville:

**1. House Bill 925**: Merger of water and sewer systems. As reported earlier, a bill was introduced on May 5 that would have required the City to convey its water system to MSD. While written as a general law, Asheville is the only City in the State as far as we know to which the bill applied. At Council's request, a letter was prepared and sent to Representative Moffitt, who introduced the bill, expressing the City's concerns with it. We learned later that the bill had been converted to a "study bill" and passed out of the house. If passed by the Senate, the issue will be referred to the Legislative Research Commission to study the issue specified in the study bill.

**2. House Bill 552**: Establishing Greater Asheville Regional Airport Authority. As covered in previous reports, this bill was introduced on March 30. The City did not request introduction of this bill. In essence, the bill would establish the Greater Asheville Regional Airport Authority as an independent authority, with certain governmental powers and duties. The current Asheville Regional Airport Authority is an agency formed by an interlocal agreement between Asheville and Buncombe County. HB 552 would reduce the City and County seats on the Authority from three to two, and would give Henderson County two seats, with a seventh member of the board to be elected by the other six. Currently, Henderson County has no dedicated seat, but does have representation on the board by appointment as the seventh member.

The property on which the airport is located is substantially, if not entirely, owned by the City and leased to the Authority. The initial acquisition in 1958 consisted of 780 acres, acquired by the City with funds from its general fund, and a 50 percent federal match. Subsequent property acquisitions over the years have been much smaller in size; most if not all of them were with airport funds and a larger (usually 90 percent) FAA match. The bill that has been introduced would also require the City, Buncombe County, and Henderson County to convey to the new authority "all of its right, title, and interest to the property known as the Asheville Regional Airport." This also applies to Buncombe County and Henderson County, but any interest those entities have in property at the airport is far smaller than the City's.

By letter dated May 15, 2011, the City expressed its strong objections and concerns about this bill, and those concerns have also been expressed in individual conversations with members of the local delegation. Those concerns include the reduction in the City's representation on the board, the eligibility requirements for appointment to the board, and the legality of the forced conveyance of property to the Authority, apparently without consideration.

Although the bill has been amended, those amendments have done little to address the City's concerns. The bill was passed out of the House on June 6, and is in the Senate where it has been passed on first reading and referred to the Senate Committee on State and Local Government.

**3. House Bill 562**: Woodfin/Asheville Boundary Adjustment. The survey work undertaken to clarify the precise location of a proposed common boundary between Asheville and Woodfin has been substantially completed. The description of the new line has been incorporated into the proposed legislation, and has been submitted to the legislative bill drafting office. This bill affects only State-owned properties; private properties in the area would have the option of remaining in their current jurisdiction, or voluntarily annexing into the other jurisdiction, with approval by both governments. Though not a perfect solution, this should help with jurisdictional and service issues in the UNC-A area, the US 19-23/Broadway interchange, and the proposed roundabout at the entrance to Reynolds Mountain. The surveyor was not able to complete the work in time for us to include it in the bill; therefore, Representative Fisher felt that it might be better to wait until the Short Session next year to get it done properly.

**4. Other Bills**:

- House Bill 845: Annexation. Of the several annexation reform bills introduced in this year's session of the General Assembly, this is the one that has gotten the most traction. It is a comprehensive bill, affecting practically every aspect of annexation law. Some key features of the bill are the requirement for cities to connect individual properties to water and sewer, and the establishment of a process whereby property owners in the annexed area could defeat or undo the annexation by a petition. This bill was passed out of the House, and is now in the Senate. Action on other bills to "undo" individual annexations are awaiting the final outcome of House Bill 845. The bill to appeal the Biltmore Lake annexation, House Bill 236, was passed out of the House on April 4, and is in the Senate where it has passed first reading and been referred to the Senate Committee on Rules and Operations.

- House Bill 307: Electronic Notices. This bill would permit local governments to use electronic means for certain required legal advertisement, such as public hearing notices. This is a local bill, but applies to 14 counties and the municipalities in those counties. Buncombe County asked to be included among the counties to which this bill applies, and Asheville has agreed.

- House Bill 308: An Act to Reform the Process of Ticketing, Selling, and Reselling Admission Tickets. This bill affects venues which accommodate more than 1,000 persons such as the Civic Center and as proposed, could have serious, negative financial consequences for the Civic Center. The bill imposes new public notice requirements regarding the availability of tickets for each event, as well as a requirement to establish a special toll-free number to answer inquiries regarding ticket sales, which could be costly as well as demanding of staff time. The bill also requires that in the case of a cancellation, the venue would be responsible for the refund of not only the face value of the ticket sold, but also any fees charged in connection with the purchase such as processing fees, shipping and handling charges, convenience fees charged by online ticketing process such as Ticketmaster. This would mean that the Civic Center would have to refund money that it had not actually received since most of these types of charges are paid by purchasers to Ticketmaster for the ability to purchase online tickets.

Moreover, the bill has stringent penalties ($100 per ticket sold at the event up to $100,000) for failure to comply with any of the requirements. HB 308 has been formally opposed by The NC Travel & Tourism Coalition as well as performance venues around the State. He said this bill failed to meet the cross-over deadline and is not eligible for consideration in this session.

**5. Developments on other matters of interest to municipalities**: He provided Council with the newsletter from the North Carolina League of Municipalities. As always, information on the bills noted above, or on any other matters of interest, is available.

Councilman Russell asked City Attorney Oast for list of members, with contact information, on the Senate Committee on State and Local Government so that Council members can contact them individually regarding House Bill 552.

Councilman Bothwell said that Senate Bill 108 (unique to Asheville and two other cities in North Carolina) has a provision for a referendum in the state on marriage. Included in bill is a provision that would remove the ability for Asheville to provide domestic partner benefits to our employees. When he asked if Council would be interested in taking a position on that, Vice-Mayor Newman noted that he did strongly oppose to that legislation; however, there are a lot of commendable and horrible bills to voice our opinion on but was unsure how many positions we should take on state-wide bills. In addition, if there was a reference on the issue, there would be a chance for people to weigh on what they agree with or what they don't agree with.

Councilman Davis felt that because we did implement domestic partner benefits, we should express our feelings. On the other hand, the Civic Center Commission adopted a resolution expressing their discontent of House Bill 308. At the Civic Center Commission meeting, City Attorney Oast advised the Commission that with the velocity of items we are making known our unhappiness or pleasure with, once it gets to a certain amount, it diminishes itself. If Senate Bill 108 or House Bill 308 are not being considered at this time, we might not be doing ourselves a favor.

Councilman Bothwell agreed that if Senate Bill 108 makes the cross-over deadline we may be able to raise the issue next year.

Regarding House Bill 552, Mayor Bellamy said we received an update from Rep. Moffitt regarding our official position. He said a couple of amendments had been made but after our review, they did not affect the provisions that Council was most concerned with. In order to keep an open communication with him, she asked for Council's concurrence that we have staff draft a letter for her signature stating that we still have the same concerns expressed in our letter dated May 15. Personally, she would not support the bill even if amendments were made. She was concerned about state government telling us that we must give our property over to an authority and then diminishing our representation on the board from 3 City of Asheville appointees to two appointees. She has contacted the Secretary of Transportation to voice her concern with the FAA ruling provided to her to say that they could not compensate us. She also called the White House to state her discontent with the FAA in this process because she didn't feel it is satisfactory for us to be told by the state that we can't get any compensation at current market value for the investment City taxpayers made into the Airport.

Vice-Mayor Newman agreed that none of the concerns addressed during the City's discussion were addressed in the amendment to the bill. He felt we need to continue to express our concerns via letter and Council communication individually.

It was the consensus of Council to have staff draft another letter to Rep. Moffitt reaffirming Council's strong objections and concerns regarding House Bill 552 and to also copy our state senate side of the legislature.

Councilwoman Manheimer reiterated her concern regarding the method of communicating with our legislators about our concerns about House Bill 552. Having worked at the legislature four years, she can tell you that it's not effective to just send a letter. We need to communicate with our legislators. It seems to be something of an inevitability that House Bill 552 requiring Asheville to transfer the property it owns to the Airport Authority will get passed and she felt we are missing our opportunity to have a seat at the table to have a discussion about how that works. We have voiced our opposition and disappointment with the requirement to transfer the property, but there might be an opportunity to negotiate some compensation. Otherwise all we are left with is a bill that is enacted that leaves us in a position of having to file a lawsuit to make a takings claim. That is a gray area of the law and she would be concerned about paying an attorney to get involved in for some extended litigation that may or may not pan out. She suggested meeting with Senator Apodoca and Rep. Moffitt to see if we can build into the bill some way to provide us compensation if they insist on including this provision that requires us to transfer the property.

Mayor Bellamy said that was fine but we also have to take into consideration that the Airport Authority is saying the FAA is not permitting them to do that. That is why she feels it's important to go to the FAA and demand that they pay us the fair market value of what the investment that the City of Asheville taxpayers put in for the Airport. Even if our legislators say we can be compensated, and the FAA says no, we are at a standstill. She felt we need to also contact the FAA to say we want our compensation.

Councilwoman Manheimer agreed with Mayor Bellamy, noting that the bill is silent as to compensation to the City. The state can do their part and put in a provision that keeps the door open for some fair compensation for the property. She felt that going forward we need to think about our methodology in terms of interacting with the legislature.

Mayor Bellamy hoped all of Council is contacting our legislators to not only talk about House Bill 552 but other legislation as well.

Councilman Davis felt we have made it clear that we are not happy with House Bill 552. He wondered if there has been any contact by anyone to us responding to our opposition and it might be appropriate to arrange a meeting with Senator Apodaca and Sen. Moffitt, as well as those others who have been in support of Asheville. Mayor Bellamy responded that she has received verbal communication from Rep. Fisher and Rep. Keever who said they were taking their names off the bill as co-sponsors. She also heard from Charles Thomas from Rep. Tillis' office about other ways the City can address this issue. She has also talked to Senator Apodaca who said he would see it in the Senate side before he could make changes.

Councilwoman Manheimer e-mailed Rep. Moffitt with the idea of compensation and provided some numbers based on Asheville's investment. He responded that he would look into the issue. She felt we have an opportunity to try to negotiate some language in there about compensation. The Mayor has raised an issue about the FAA's position about compensation for the land. We need that investigated to see they would compensate the City for some legal reason.

City Attorney Oast said that the bill does provide for any conveyance from the City to the Airport Authority to be with the FAA's approval. He did not know what their position is on compensation.

Vice-Mayor Newman felt this is not just a debate between us and our legislatures, since there are very large national policies around investments in aviation facilities where the FAA is

involved. A completely different solution might be instead of requiring transfer of the title, the legislation could simply say that the Airport has a long-term lease for $1 a year. There is another way to effect the creation of an independent Authority that would simply set aside the issue of the title transfer property. If Senator Apodaca wanted to address our concerns, they could pull the title transfer piece out of the bill and let some other parts of it move forward.

In response to Councilman Bothwell, City Manager Jackson said there is no financial compensation regarding the Airport property being leased to the Airport Authority.

Mayor Bellamy said that House Bill 925 is now a study bill directing the Legislative Research Committee to study the merger of water and sewer systems. She said that Rep. Moffitt has also suggested that a local group look at this issue from Asheville's prospective. City Attorney Oast said that Council can suggest the Legislative Research Commission seek input from local sources. Mayor Bellamy felt it would also behoove us to look at the 12 issues outlined in the bill from Asheville's standpoint. We should not leave it to a Raleigh commission to determine the fate of our water system.

Councilman Bill reviewed the 12 issues from the bill to be examined and felt there would have to be members of the City Water Department and members of the Metropolitan Sewerage District on this research committee or least for them to be contacted to provide the information. He would prefer we have individuals from the City and MSD on this study commission.

In response to Councilwoman Manheimer, City Attorney Oast felt the Legislative Research Committee is a fixed group. He did feel that a mechanism could be incorporated into the bill to structure some input from a local study group.

Mayor Bellamy felt it would be more appropriate to have a local group review the issues in depth and report their findings. Regardless of what happens in Raleigh it is our water system. She would support the local study group including representatives from MSD to look at the 12 issues from our eyes, not just a group from Raleigh and their staff. This will impact the future of our water system.

Vice-Mayor Newman suggested that if House Bill 925 is enacted, then we would ask the staff to prepare some information for Council to consider about how this process will work and how we can be constructively engaged in responding to it to make sure Asheville's prospective is presented as part of this discussion.

City Manager Jackson said that in Mayor Bellamy's letter to Rep. Moffitt, we posed several questions about the structure, the scope, how they will get professional advice, how it will be performing it's analysis, etc. To add to our understanding, hopefully we will get some response back from the author of the bill.

**B. SIX-MONTH UPDATE ON HILLCREST PEDESTRIAN BRIDGE RE-OPENING**

Interim Police Chief Wade Wood said that City Council requested a six-month update on the re-opening of the Hillcrest Pedestrian Bridge.

This report details a six-month time frame from the re-opening of the Hillcrest Pedestrian Bridge crossing I-240 from both the Hillcrest Apartments and the Westgate Shopping Center. City Council directed the bridge opening following traffic fatalities as persons crossed I-240 on foot.

- The N.C. Dept. of Transportation (NC DOT) completed their initial required work and the bridge opened in December 2010.
- Crime prevention efforts, through increased police presence were implemented immediately.

- Increased presence included on duty officers from all three Police Districts, Community Resource Officers as well as the Drug Suppression Unit. The Asheville Police Department (APD) and Buncombe County Sherriff's Office (BCSO), working secondary through the Asheville Housing Authority, were also involved.
- Charts show high police activity from December 2010 through March 2011.
- A rash of vandalism occurred as cabling and infrastructure were being installed at Hillcrest for improved exterior lighting and cameras.
- Vandalism prompted the housing authority to increase secondary employment of APD and BCSO for April, May and June of 2011 for security of this installation.
- The Drug Suppression Unit partnered with Criminal Investigations to determine those responsible for the vandalism. Total damage and repair costs were in excess of $5000.
- Vandalism prompted the housing authority to close the Hillcrest Gate access to the bridge for a short period of time. The gate has since re-opened.
- Two suspects have been charged with the acts of vandalism.
- Extra checks by Patrol Personnel were not conducted during the time of the increased secondary employment of off duty officers by the Asheville Housing Authority (AHA).
- City applied for a COPS grant for five officers, three of which would be dedicated to Drug and Gang Suppression efforts with some focus on Hillcrest.

Partnering with City of Asheville Transportation and Public Works Departments and NC DOT has produced the following work:

- In April, tore out the fence at the end of the Westgate walkover and replaced it with a ten foot fence. Done to greatly reduce or eliminate the pedestrian traffic that was crossing the interstate that could simply step on the railing and climb over the small fence. Even after the bridge was open, pedestrian traffic was noted crossing I-240.
- Raised the sidewalk that was completely under mud and added an additional small section of fence just outside of the Hillcrest entrance to prevent further trespassing on NC DOT property.
- No trespass signs were erected under the I-240 bridge.
- Installation of two gates one at the corner of the pedestrian bridge at the top closest to Hillcrest and one on the other side under the bridge next to the end of the Smoky Park Bridge. The NC DOT is fabricating iron gates similar to the one on the Hillcrest side, as soon as they are completed they will be installed.
- Plans are for clearing the wooded area on the west side of the walkover. This will be conducted by City of Asheville Public Works, based on Crime Prevention Through Environmental Design (CPTED) evaluation and community input.
- City staff are working with Progress Energy for the installation of street lights to illuminate the sidewalk.
- The City plans to coordinate a community event towards the end of August 2011 to recognize the work our partnerships have accomplished and to reconnect the neighborhoods on either side of the bridge. This will be handled by the Neighborhood Coordinator Marsha Stickford.

This action ties in with the Strategic Operating Plan for safer communities within Asheville.

Pros:

- No Pedestrian Traffic Deaths or Crashes with Pedestrians during this 6 month period on or near I-240.
- Calls for Police Service within Hillcrest have decreased while police presence has increased.
- APD has not seen an increase in calls for service related to the opening of the walkover bridge.

Cons:

- Increased police presence has created increase tension with some residents of Hillcrest.
- Damage to infrastructure which supports higher levels of security through lighting and cameras.

The majority of the increased police presence has been conducted by on duty personnel or through housing authority secondary employment resulting in minimal fiscal impact.

City staff recommends City Council continue to support the re-opening of the Hillcrest Pedestrian Bridge. Additional requests for crime prevention and suppression will come in future staff reports.

Interim Chief Wood responded to some questions raised by Councilman Smith.

**C. RESOLUTION NO. 11-117 - RESOLUTION TO ASSIGN FEDERAL FAIR HOUSING INVESTIGATION SERVICES TO THE NORTH CAROLINA HUMAN RIGHTS COMMISSION**

Community Development Director Jeff Staudinger said that this is the consideration of a recommendation to have the North Carolina Human Rights Commission conduct all US Department of Housing and Urban Development (HUD) Fair Housing Compliance Investigations in the City of Asheville.

Every HUD grantee, as part of their responsibility to affirmatively further fair housing, needs to ensure that possible violations of the federal fair housing law are properly investigated and resolved. Such services are typically performed by governmental agencies at local and state levels that have been determined by HUD to have investigative capacity and fair housing regulations "substantially equivalent" to HUD.

These services have historically been provided to residents of Asheville and Buncombe County by the Asheville Buncombe Community Relations Council. HUD has provided Fair Housing Assistance Program (FHAP) funding to the City for this purpose. The City has passed through 100% of this funding to ABCRC to support staff and other costs of providing this service. Additionally, for many years the City has provided CDBG funding to ABCRC annually as additional support for these HUD-required services. It should be noted that CDBG program funding nationally has now been cut substantially, resulting in substantial reductions to funds available for distribution to local organizations.

This spring, in response to reorganization issues at ABCRC, the City staff investigated the options available to the City for conducting these investigations. Research revealed that most communities in the state have this service performed by the NC Human Rights Commission (NCHRC). When the Commission performs this service, the HUD Fair Housing Assistance Program (FHAP) funding is paid directly to that agency. The Commission does not require that its services be supported with other local funding.

If the City switches these reviews to the NCHRC the change in service would affect fair housing investigation of federal fair housing violations only. Local fair housing concerns would still need to be addressed locally. ABCRC is preparing a revised proposal for City Outside Agency funding to support this local service.

This proposal would support the City Council Strategic Goal of Affordable, by supporting access for safe, sufficient and affordable housing for Asheville residents.

Pros:

- The provision of this service by the NC Human Rights Commission will ensure that federal fair housing laws are enforced in the City;

- HUD has assured the City that no loss in the quality of the investigations would result from this change;

- The change would enable the CDBG funds formerly allocated for this service to be used for other community development purposes.

Con:

- Marketing and other provisions to ensure that Asheville residents are aware of and can easily access these services will need to be made.

The service has been supported in the past with Community Development Block Grant funding and with HUD FHAP funding passed through the City to ABCRC. If the service is provided through NCHRC, those CDBG funds will be distributed for other eligible uses. The City will no longer have the responsibility for administering the FHAP pass-through process; the City received no funding for that service.

The Housing and Community Development Committee has positively reviewed the proposal to transfer the FHAP program responsibilities and funding to the North Carolina Human Rights Commission. Staff recommends that City Council approve the proposal.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 11-117. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Mayor Bellamy voting "no."

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**D. RESOLUTION NO. 11-118 - RESOLUTION ESTABLISHING AN AFFORDABLE HOUSING ADVISORY COMMITTEE**

Community Development Director Jeff Staudinger said that this is the consideration of a resolution establishing an Affordable Housing Advisory Committee.

In 2007, the Mayor gathered a broad community study group to address the issues of housing affordability in Asheville. The group met for several months and submitted a comprehensive Affordable Housing Plan for the City of Asheville, which was accepted by the Asheville City Council on June 24, 2008. A working group continued to meet with City staff to develop specific implementation steps, including amendments to the Unified Development Ordinance, Housing Trust Fund, and other key strategies. Last fall this working group proposed to the Housing and Community Development Committee that an Affordable Housing Advisory Committee be established, with specific duties to advise the Mayor, the City Council, the Housing and Community Development Committee, and City staff. The HCD Committee has completed their evaluation of that request and now proposes the formation of the Committee.

*Purpose of the Advisory Committee:*

Through a public-private partnership, the Affordable Housing Advisory Committee will work in conjunction with City leadership and staff to implement the 2008 Affordable Housing Plan. The specific functions will be –

- To consider affordable housing policy issues and advise City leadership about those policies;

- To develop concrete action steps to implement the highest priorities of the Affordable Housing Plan, and to update that plan as appropriate over time.
- To advise City leadership and staff regarding affordable housing priorities for the investment of City-controlled funds.

*Membership:*

The Affordable Housing Advisory Committee should not exceed 9 members and ideally will have as members Asheville residents who have housing experience, including:

- A non-profit developer of affordable housing
- A for-profit housing developer
- An affordable housing advocate
- An architect
- A real estate agent
- A neighborhood association representative
- A resident of affordable housing
- A representative of the housing authority
- A representative of the private philanthropic community

This project directly meets the affordability goal of the 2011-2012 Council Strategic Plan which has the objective to "create an affordable housing standing group or commission to advise City Council on matters related to affordable housing consisting of a diverse stakeholder group."

Pro:

- Formal citizen consideration of affordable housing issues will bring renewed effort to addressing Asheville's affordable housing needs;

Con:

- It may be difficult to maintain a good balance of interests on such a committee between affordable housing advocates and those representing broader interests.

There will be no direct fiscal impact of establishing an Advisory Committee. The Committee will require staffing resources, provided by the Community Development Division.

City staff, supported by the Housing and Community Development Committee, recommends City Council establish an Affordable Housing Advisory Committee.

Upon request of Mayor Bellamy, it was the consensus of Council to include a person from the disabled community.

In response to Councilman Bothwell, Vice-Mayor Newman said that the Committee will not specifically be made up of each one of those representatives, but that Council will be committed to try to recruit those specific people to the Committee.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 11-118, with the amendment to the membership to include a person from the disability community. This motion was seconded by Councilman Smith and carried unanimously.

## VI. NEW BUSINESS:

### A. RESOLUTION NO. 11-119 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A UTILITY CUT ENTERPRISE FUND REPAIR AGREEMENT WITH METROPOLITAN SEWERAGE DISTRICT

Public Works Director Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to enter into a Utility Cut Enterprise Fund Repair Agreement with Metropolitan Sewerage District (MSD).

Several utility companies have requested that the City repair all street and sidewalk cuts they make within the City limits. City staff have evaluated this request and proposed a financial structure that would allow the City to perform these services without an increase in cost to the City's General Fund. Currently the City Water Department, Stormwater Enterprise Fund and MSD participate in the program. MSD would like to begin their participation effective July 1, 2011. Progress Energy has also indicated some interest participating in the program.

Under this agreement, the City would make all asphalt or concrete repairs to trenches cut and backfilled by MSD. MSD will not be required to obtain permits but will be required to notify the City within 24 hours of any cuts made. The City will utilize a nuclear density gauge to determine the compaction of the trench and if acceptable will make the repair. MSD will no longer have a warrant period for the cut.

The MSD Board unanimously approved this agreement at their May Board meeting.

The Street Utility Cut Enterprise Fund was approved by City Council as part of the FY 2011 Budget. The action supports several of Council's Strategic Goals by leveraging internal and external partnerships as well as improving the affordability of water and stormwater rates.

Pros:

- All cuts and repairs will be made in accordance with the City of Asheville Standards and Specifications Manual.
- MSD will not be required to obtain street cut permits.
- The program will be more efficient due to number of cuts the City will be repairing.
- Repairs will be more consistent.
- Due to the structuring of the program, the City has minimal risk in this agreement.

Con:

- Contractors that have been performing this work for MSD will no longer be contracted to perform these repairs inside the City limits. We have met with the contractor and have asked him to submit bids on other work for the City. While we cannot guarantee his company the work, we will make sure he gets the necessary information to submit bids.

The City's ability to provide these services, based on the previous five years data, would cost approximately $1.6 million. A review of the amount of permits over the past five years indicates that approximately 55% of the permits were obtained from the Water Department, 35% of the permits were obtained by MSD, 5% from PSNC and 5% to the City's Stormwater. The cost of the program is broken down as follows:

| Agency | % of cuts | % of cost |
|---|---|---|
| Water Department | 55 | $880,000 |
| MSD | 35 | $560,000 |
| PSNC | 5 | $80,000 |
| Stormwater | 5 | $80,000 |

| | | |
|---|---|---|
| Total | 100 | $1,600,000 |

The program will be reviewed annually. In the event that actual cost exceeds 10% of the budget, MSD will be required to pay the difference between the budgeted amount and the actual amount. In the event that actual cost is 10% less than the budgeted amount, the City will reimburse MSD the difference between the budgeted amount and the actual amount.

City staff recommends City Council authorize the City Manager to enter into a Utility Cut Enterprise Fund Repair Agreement with MSD.

Councilman Russell said that the Finance Committee reviewed this last year and recommended approval.

When Councilman Russell asked if we are working with other utilities, Ms. Ball said that Progress Energy is interested and we are working to come up with a proposal for them. At this point AT&T has shown no interest in the program, but they are open to including more utilities.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 11-119. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 49**

**B. RESOLUTION NO. 11-120 - RESOLUTION AUTHORIZING APPROVAL OF THE 2012 OUTSIDE AGENCY GRANTS**

Community Development Director Jeff Staudinger said that this is the consideration of a resolution approving of the recommendations of the Housing & Community Development (HCD) Committee for the 2012 Outside Agency Program.

The HCD Committee received applications from 12 eligible organizations for Outside Agency funding for 2012. The Committee considered these applications at their meeting of May 19, 2011, and now recommends 11 applications for funding. The recommendations are:

| **Agency** | **Funding Support Purpose** | **2011 Recommended Funding** |
|---|---|---|
| Child Abuse Prevention Services, Inc. | General operating support targeted to parenting education and outreach | $ 5,000 |
| Children First /Communities in Schools | Project MARCH: after-school safe-haven program at three housing complexes in the City | $17,800 |

| | | |
|---|---|---|
| Design Center | Small Business Assessment Pilot Program in cooperation with COA's Community Development, Economic Development and Development Services Departments. | $ 4,000 |
| Homeward Bound of Asheville-AHOPE | A HOPE Day Center outreach, intake and support for homeless persons, support for weekend operations. | $20,000 |
| One Youth at a Time | Provides mentoring, job training and placement assistance to at-risk students | $ 5,600 |
| YWCA of Asheville and WNC | Future Vision daily afterschool program and summer camp program. | $ 8,000 |
| Housing Authority-Youthful HAND | The Youthful HAND (YH) Afterschool Program serving children in grades K-8 who reside in the Lee Walker Heights (LWH) housing development. | $ 4,000 |
| Kids Voting Buncombe County | Kids Voting provides a K-12 civics curriculum to area educators, offers students a voting experience, and offers a community service opportunity for High School Students. | $ 1,000 |
| Governor's Western Residence Association | GWR requests one-time funding to replace or refurbish old and worn out furniture, drapes, bedding and rugs. | $ 5,000 |
| Economic Development Coalition | EDC seeks operation funding to market economic development assets and services which will lead to job creation in the City. | $40,000 |
| Asheville Greenworks | Enhance the environment and quality of life through awareness building, community activities and partnerships. | $ 8,000 |
| Total | | $118,400 |

Additionally, Council heard a report from and conceptually approved funding for the Asheville-Buncombe Regional Sports Commission on May 10, 2011. The Outside Agency budget has been increased by $45,000 to support this agency; future requests will be addressed through the annual Outside Agency program funding process.

This action complies with the City Council Strategic Operating Plan in (1) Fiscal responsibility, by identifying resources for strategic partnerships and creating meaningful performance measures for programs and services; (2) Job Growth and Community development, by participating in effective partnerships to achieve goals in health and wellness, workforce development and sustainable economic development; and (3) Safe, by supporting recreation and employment alternatives for youth at risk of gang exposure.

Pros:

- Approval of Outside Agency Grants provides operating support to Asheville-based organizations that are providing direct services for Asheville residents.
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee.

Con:

- Budget constraints continue to curtail the availability of funds; supported organizations will need to find alternate sources of program support.

Outside Agency Grants are funded from the City's general fund. The funding recommendations are within the fiscal limits developed by Council during the budget working sessions. No increase in organizational funding is recommended. One-time funding for the Western Carolina Governors Residence is recommended this year. First-time funding for the Asheville-Buncombe Regional Sports Commission is also included.

The HCD recommends approval of the 2012 Outside Agency Program grants as presented.

Mr. Staudinger responded to Mayor Bellamy's question of the Design Center's function. This would help inexperienced entrepreneurs in the community who are seeking to renovate space and who are finding the permit process difficult to navigate. Entrepreneurs can receive levels of assistance in their permit needs and when they need professional assistance. Staff will not make recommendation on professionals to use, but just help them understand what the technical requirements are. The Design Center has proposed to develop a comprehensive checklist of permits needed in collaboration with the Building Services Department and then to pilot a technical assistance program, as permit applicants come into the City, to help them understand what their needs are.

Councilman Davis misunderstood the pilot program and could not be supportive of allocating $4,000 for this function.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 11-120. This motion was seconded by Vice-Mayor Newman and carried on a 6-1 vote with Councilman Davis voting "no."

**RESOLUTION BOOK NO. 34 – PAGE 51**

**C. ORDINANCE NO. 3986 - BUDGET AMENDMENT TRANSFERRING RESOURCES FROM THE GENERAL FUND TO THE FESTIVAL FUND**

Administrative Services Director Lauren Bradley said that this is the consideration of a budget amendment, in the amount of $1,550,000, from the General Fund for the purpose of transferring resources to the Festival Fund to close the fund out as recommended by the City's external auditors.

The Festival Fund was established in 1990. For the majority of that decade, portions of the programs' expenditures were recorded in both the General Fund and the Festival Fund with the majority of the revenues accounted for in the Festival Fund. Beginning in 2002, in an effort to improve transparency and provide for greater cost accounting of the festival activities, the General Fund program expenditures were realigned over a period of several years to the Festival Fund.

As the City Council is aware, the Festival Fund has been classified as an enterprise fund on the City's financial statements. The external auditors have commented previously on the appropriateness of that classification given that the activities accounted for in the Festival Fund generally do not have the characteristics associated with enterprise activities (such as, fees charged to users, self-supporting, State laws requiring separate funds, pricing policies designed to recover operating and capital costs). As a result of the auditor's comments in connection with the 2010 audit, City staff prepared the 2012 budget by folding the operations of the Festival Fund in the General Fund. The City will still be able to track festival revenues and expenditures separately; but will simply do so within the General Fund.

The City combines or pools a majority of its cash and investments of the various accounting funds to improve investment performance and to limit the need to transfer funds among separate bank accounts. Each accounting fund's position in the combined pool is reflected as an asset (cash and investments) on the balance sheet. Sometimes an individual accounting fund overdraws its share of pool cash and investments – as with the Festival Fund due to its negative net asset position. When this situation occurs, the overdraft is reflected as an interfund liability (due to another fund) rather than a negative cash amount in the pool. Likewise, an equivalent amount of some other accounting fund's position in the pool is then reclassified as an interfund receivable – in this case the General Fund. These accounting transactions are, in essence, a form of temporary cash loan to cover the negative cash position.

Over the years, the Festival Fund's negative cash and investment position has grown due to expenses exceeding revenues and formal transfers in from the General Fund. As previously mentioned and reflected in the table below, the growing negative net asset position arose as a result of an effort to reflect the costs of the festival program in the enterprise fund and revenues falling short of budget estimates. While there have been several formal General Fund transfers made since 2002, those transfers were generally not sufficient to cover the loss for the year. Additionally, beginning in 2002 when there was an increased effort to reflect all the festival program costs in the Festival Fund, there were no transfers which resulted in a rapid increase in the negative financial position of the Festival Fund.

| Fiscal Year | Budget | Expenses | Revenues | Transfer In | Net Income (Loss) | Cumulative Net Assets |
|---|---|---|---|---|---|---|
| 2010 | $796,449 | $(757,766) | $637,965 | $184,726 | $64,925 | $(1,556,517) |
| 2009 | 1,121,064 | (1,106,424) | 770,903 | 162,675 | (172,846) | (1,621,442) |
| 2008 | 1,230,544 | (1,169,695) | 860,135 | 253,922 | (55,638) | (1,448,596) |
| 2007 | 1,346,878 | (1,314,846) | 868,327 | - | (446,519) | (1,392,958) |
| 2006 | 1,249,413 | (1,269,793) | 1,032,524 | 100,000 | (137,269) | (946,439) |
| 2005 | 1,100,360 | (1,067,019) | 701,097 | - | (365,922) | (809,170) |
| 2004 | 1,533,026 | (1,121,437) | 787,812 | - | (333,625) | (443,248) |
| 2003 | 913,727 | (801,385) | 725,855 | - | (75,530) | (109,623) |
| 2002 | 823,740 | (786,762) | 694,351 | - | (92,411) | (34,093) |
| 2001 | 976,907 | (574,469) | 574,473 | - | 4 | 58,318 |

Because the accounting and financial reporting regulations require negative cash and investment positions to be offset in other funds, the General Fund's cash and investment position has been reduced in a like amount. The amount is reflected on the General Fund balance sheet as "due from other funds" and in fund balance as "reserved by State Statute". Because cash and investments represent the beginning point for the calculation of available fund balance, the General Fund's undesignated fund balance position already reflects the impact of the negative cash position in the Festival Fund. Therefore, the financial impact of the Festival Fund closeout on the General Fund's undesignated fund balance has already been reflected in the City's financial statements. The closeout will impact the "State statute" reservation which is not part of the City's 15% fund balance policy objective.

In connection with the 2011 audit and the current fiscal year, the City will be closing down the Festival Fund. Because the Festival Fund has not been self-supporting over the years, the net assets of the fund were a negative $1,556,517 at June 30, 2010. City staff believes that the financial performance of the Festival Fund in 2011 will be break even; so the cumulative net asset amount of negative $1.556 million will likely be unchanged.

In order to closeout the Festival Fund, the City must formally transfer resources to the Festivals Fund through a budget amendment to eliminate the interfund liability described previously.

This action complies with City Council's Strategic Operating Plan of operating the City of Asheville's organization to the highest fiscal responsibility.

Pro:
• Conforms the City's financial statements with generally accepted accounting and reporting standards.

Con:
• None noted.

General Fund undesignated fund balance at June 30, 2010, already reflected the financial impact of the interfund receivable from the Festival Fund, therefore this amendment has no impact on the General Fund's available fund balance. The transfer in 2011 permits the City to close out the Festival Fund. Staff adjusted the festivals expenditure budget in FY 2010 to more closely align with anticipated revenues. As a result, the Festivals Fund has shown improved financial performance over the last two years. Net income totaled $64,925 in FY 2010, and the Festivals Fund is expected to break even in FY 2011. As noted earlier in the report, festivals expenses and revenues are budgeted in the General Fund in FY 2012.

City staff recommends City Council approve the budget amendment appropriating $1,550,000 from the General Fund for the purpose of formally transferring resources to the Festival Fund to eliminate the interfund liability.

Ms. Bradley clarified several points raised by Mayor Bellamy.

Mayor Bellamy wanted to make sure that Council can still easily identify festival revenues and expenses, and how much taxpayer dollars are subsidizing festivals.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3986. This motion was seconded by Councilman Smith and carried unanimously.

**ORDINANCE BOOK NO. 27 - PAGE 79**

**D. BOARDS & COMMISSIONS**

**CIVIC CENTER COMMISSION**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Civic Center Commission. .

The terms of John West, Carol Ann McLendon and James Richards will expire on June 30, 2011.

The following individuals have applied for vacancies: Saul Chase, Christopher James Bradford, Flora Marr, Heather Hunter, Elizabeth Franks and Karl R. Katterjohn.

It was the consensus of Boards & Commissions Committee to (1) reappoint Mr. West and Ms. McLendon to each serve a three-year term respectively, terms to expire June 30, 2014, or until their successors have been appointed; and (2) recommend interviewing Ms. Flora Marr and Ms. Elizabeth Franks.

Vice-Mayor Newman moved to (1) reappoint John West and Carol Ann McLendon to each serve a three-year term respectively, terms to expire June 30, 2014, or until their successors have been appointed; and (2) instruct the City Clerk to arrange interviews for Ms. Flora Marr and Ms. Elizabeth Franks. This motion was seconded by Councilman Russell and carried unanimously.

**PUBLIC ART BOARD**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Public Art Board. .

The terms of Kenn Kotara, Jaan Ferree, Julie Calhoun-Roepnack and Barry Pate will expire on June 30, 2011.

The following individuals have applied for vacancies: William F. Meller, Richard G. Lee, Susanne Hackett, Leslie Shaw, Ami Worthen, Gwynn Rukenbrod, Jessica McCuan, Leslie Klingner and Jennifer Gordon.

It was the consensus of Boards & Commissions Committee to (1) reappoint Ms. Ferree and Ms. Calhoun-Roepnack to each serve a three-year term respectively, terms to expire June 30, 2014, or until their successors have been appointed; (2) appoint Ms. Suzanne Hackett to serve a three-year term, term to expire June 30, 2014, or until her successor has been appointed; and (3) recommend interviewing Ms. Jennifer Gordon and Ms. Leslie Klingner.

After a brief discussion, Vice-Mayor Newman moved to (1) reappoint Jaan Ferree and Julia Calhoun-Roepnack to each serve a three-year term respectively, terms to expire June 30, 2014, or until their successors have been appointed; and (2) instruct the City Clerk to arrange interviews for Ms. Susanne Hackett, Ms. Ami Worthen, Ms. Gwynne Rukenbrod, Ms. Jessica McCuan, Ms. Jennifer Gordon and Ms. Leslie Klingner. This motion was seconded by Councilman Smith and carried unanimously.

Councilman Russell noted that there is a Finance Committee scheduled at 3:30 p.m. on June 28, but due to the number of board/commission interviews taking place on that date, he would contact staff to re-schedule the Finance Committee meeting.

**RESOLUTION NO. 11-121 - RESOLUTION APPOINTING MEMBERS TO THE CITIZENS-POLICE ADVISORY COMMITTEE**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Citizens-Police Advisory Committee.

The terms of Carol Rogoff Hallstrom (North representative), Bob Smith (Central representative), Allen Brailsford (West representative) and Charlie Hume (South representative) will expire on June 30, 2011.

The following individuals have applied for vacancies: Gabriela Volkomer, Sarah Nunez (who is currently serving as an ad hoc voting member), Nancy M. Baker, Jay Lively, and Marie-Line Germain.

The Boards & Commission Committee recommended (1) reappointing Ms. Hallstrom, Mr. Brailsford and Mr. Hume; and (2) appointing Marie-Line Germain.

Vice-Mayor Newman moved to reappoint Carol Hallstrom (North), Allen Brailsford (West) and Charlie Hume (South), as members of the Citizens-Police Advisory Committee to each serve a three-year term respectively, terms to expire June 30, 2014, or until their successors have been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

Vice-Mayor Newman moved to appoint Marie-Line Germain (Central) to serve a three-year term, term to expire June 30, 2014, or until her successor has been appointed. This motion was seconded by Councilman Russell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 53**

**RESOLUTION NO. 11-122 - RESOLUTION APPOINTING A MEMBER TO THE CRIME-STOPPERS BOARD OF DIRECTORS**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Crime-Stoppers Board of Directors. .

The terms of David Herbert and Michele McClure will expire on June 30, 2011.

No individuals have applied for the vacancies.

The Boards & Commissions Commission recommended reappointing Mr. Herbert and re-advertising for the other seat.

Vice-Mayor Newman moved to (1) reappoint David Herbert to serve an additional three-year term, term to expire June 30, 2014, or until his successor has been appointed; and (2) re-advertise for the other seat. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 54**

**RESOLUTION NO. 11-123- RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Recreation Board. .

The terms of Mildred Nance-Carson, Lonnie Gilliam, Geoffrey Ferland and Will Callaway will expire on June 30, 2011. In addition there currently exists a vacancy left by Sara Manual until June 30, 2012.

The following individuals have applied for vacancies: Todd M. Dunnuck and Josh O'Conner.

The Boards & Commission Committee recommended (1) reappointing Ms. Nance-Carson and Mr. Gilliam to each serve a three-year term respectively, terms to expire June 30, 2014, or until their successors have been appointed; (2) appointing Todd Dunnuck and Josh O'Conner; and (3) re-advertising for the vacancy left by Ms. Manual.

Vice-Mayor Newman moved to (1) reappoint Ms. Nance-Carson and Mr. Gilliam to each serve a three-year term respectively, terms to expire June 30, 2014, or until their successors have been appointed; and (2) re-advertise for the vacancy left by Ms. Manual. This motion was seconded by Councilman Bothwell and carried unanimously.

Vice-Mayor Newman moved to appoint Todd Dunnuck and Josh O'Conner to each serve a three-year term respectively, terms to expire June 30, 2014, or until their successors have been appointed. This motion was seconded by Councilwoman Manheimer and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 55**

**RESOLUTION NO. 11-124 - RESOLUTION APPOINTING A MEMBER TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT**

Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that Ms. Sasha Vrtunski, member on the Sustainable Advisory Committee on Energy & the Environment (SACEE) has resigned, thus leaving an unexpired term until December 31, 2012.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended appointing Torin Kexel due to a recently advertised vacancy.

Councilman Bothwell moved to appoint Torin Kexel to serve the unexpired term of Ms. Vrtunski, term to expire December 31, 2012, or until his successor has been appointed. This motion was seconded by Councilman Russell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 56**

**PLANNING & ZONING COMMISSION**

Vice-Mayor Newman said that the Boards & Commissions Committee recommends that five-six candidates be interviewed for the upcoming Planning & Zoning Commission vacancies. Each candidate will have a 20-minute televised interview in the Council Chamber. At the August 9 meeting, the Boards & Commissions will make recommendations to the Council for the interviews.

Council's existing policy is that if any one member of Council who wants to interview a candidate for a given board, that candidate is interviewed. In light of the fact that we are allocating 20 minutes for each interview, the Boards & Commissions Committee suggested that if there are additional candidates Council wants to interview, that it would require 2 members of Council to request that person go through the full interview process.

Because this is similar to School Board appointments, Mayor Bellamy asked when the City Council questions would be due. City Clerk Burleson she said that the request for Council

questions would be sent out on July 1, with all questions to be returned one week from them. The Boards & Commissions Committee, at their July 26 meeting, would then narrow down the questions to five.

Mayor Bellamy recalled from prior School Board appointments that the entire City Council narrowed the questions down. Due to the elevated process of these appointments, she felt all of Council should have the opportunity to narrow the questions down.

Vice-Mayor said that Council can choose to have more than five essay questions so that each member of Council has at least one of their most top priority questions responded to in an essay fashion.

Councilman Davis said that the Boards & Commissions Committee recommended requesting three questions from each Council member and then the Committee would narrow the questions to five. Because there would be 21 questions, Vice-Mayor Newman felt there would be helpful that the Committee narrow the questions and on July 26 Council could confirm those would be the ones for essay responses. Councilman Smith noted that Council will still have the opportunity to ask any individual or follow-up questions in the 20-minute open interviews.

Councilman Russell and Councilwoman Manheimer would like for the Boards & Commissions Committee to recommend five questions and then Council can review them at their July 26 meeting.

At the request of the majority of Council, City Clerk Burleson would provide City Council with all questions received on July 22, noting that the Boards & Commissions Committee would narrow them down to five at their July 26 meeting. At the formal meeting on July 26, the Committee will provide Council with their five recommended questions.

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Dr. Milton Byrd offered his service to work with the City of Asheville in mediating in moving forward with public access regarding television, as well as addressing some of the URTV issues. Councilman Russell noted that the Finance Committee will be meeting on this issue and the matter will be coming back to Council in the very near future. Because Dr. Byrd would be requesting a meeting with the Mayor, Mayor Bellamy suggested he first attend the Finance Committee and the Council meeting where this will be discussed, as she does not have any information to share. Mayor Bellamy asked City staff provide Council and Dr. Byrd with information from the Finance Committee that outlines the broad details for an Request for Proposals process (which is scheduled before Council on June 28), staff recommendations which were approved by the Finance Committee, and a timeline of URTV funding and management decisions. Mayor Bellamy also noted that the City had a management contract with URTV that they have been adhering to all along, while addressing the issue with URTV leadership.

Rev. Lisa Landis felt didn't feel that someone from the outside that has never been to URTV, viewed the studios and operations to see how it works, or to see the programming will have the best ideas on how to fix it.

Rev. Christopher Chiaronmonte felt that Buncombe County should pay URTV the money owed to it.

Mr. John Kleckner explained that he has been keeping the streets clean to help raise money for a film project he would like to do, noting that the community is supportive of his efforts.

At the request of Councilman Bothwell, City Manager Jackson said that he would provide Council with information on the last evaluation of the performance and effectiveness of the Council sound system.

Councilman Davis said that concern has been expressed about comments made by Councilman Bothwell regarding the Conservancy's work on Pack Square Park. Asheville has received a wonderful gift from the Conservancy, even though the financing by the Conservancy did not happen like we wanted. The process to construct restrooms in the Park was a long process and the Buncombe County Tourism Development Authority has provided the funding; however, merchants nearby the Park requested the construction be delayed until after the summer season. Personally, he is appreciative of the Park and even though the financing didn't work out the way we all wanted it to, he was glad of those things that did work out.

Councilman Bothwell said that the Conservancy's failure to start the restrooms in March, as announced, being delayed until November was what concerned him. The felt Pack Square Park represents a major calamity in the City and requested an accounting of the money. He pointed out several design failures. He is very disappointed in the Park as it has turned out, especially in the amount of money spent, including taxpayer money which they were told initially would never be spent.

Councilman Russell respected everyone's opinion; however, he requested that any future correspondence by an individual member of Council be signed by them only and not titled as Asheville City Council.

Mayor Bellamy said that officials from other cities around North Carolina have commented on how they wish they had this Park in their respective city. Beauty is in the eye of the beholder and she sees a beautiful Park. She acknowledging mistakes were made, but we can continue to fight over what is wrong with it, or work together to fix it and make it better for our community. It is a wonderful City asset.

Mayor Bellamy requested City Clerk Burleson provide Council with the audits of the Pack Square Conservancy, along with the Buncombe County audit.

**Claims**

The following claims were received by the City of Asheville during the period of May 13 – June 9, 2011: Walter Goggans (Transit), Sandra Griffin (Police), Aaron Pienta (Water), John Houser (Transit), Marjorie Coleman (Streets), Craig/is Ltd (Streets), Carol Keleher (Streets), Robert Miller (Streets), Debra Penland (Water), AT&T (Sanitation), AT&T (Water), Progress Energy (Water), Donnie McCaslin (Water) and Eastwood Village Apts (Water). These claims have been referred to Asheville Claims Corporation for investigation.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:42 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – June 28, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Cecil Bothwell (out of town)

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Russell gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF THE DECORATIVE RESTORATION PROGRAM AT A-B TECHNICAL COMMUNITY COLLEGE**

Mayor Bellamy read the recognition of the Decorative Restoration Program at A-B Technical Community College. She said that the Program was founded in 1988 as a cooperative venture with the Biltmore Estate. Students have come from as far away as Alaska and Vermont to take advantage of the only full-time program of its kind in the country, which will be graduating its last class this year. The program has graduated nearly 300 students, all skilled artisans, a number of whom have begun thriving restoration businesses all across the country and have worked on the restoration of historic artifacts and buildings, churches and cathedrals. Still other graduates have become designers, decorative painters, and film producers.

Two passionate and visionary teachers have guided the Decorative Restoration program during its twenty-three years: Derick Tickle, a master craftsman who previously taught for London's distinguished City & Guilds, arrived from England in 1989 and directed the program until his retirement in 2005 when Tim Hanlon, a 1997 graduate of the program, took over its leadership.

We have these two instructors and their students to thank for the beautifully restored jewel-like ceiling of the County Courthouse, which took six years to complete, and for the uniquely decorative foyer and Council Chamber of City Hall. Visitors to the Biltmore House are awed by total effect of 17,500 pieces of gold-leaf covering the walls of George Vanderbilt's bedroom and the distinctive touches elsewhere in the house, evidence of a long-time collaboration between neighbors A-B Tech and the Biltmore Estate.

We appreciate the program's philosophy that the greenest building is the one already built. The Decorative Restoration Program has helped keep Asheville's heritage intact for today and tomorrow. Through its contributions, Asheville's citizens learn to appreciate our historic buildings, their decoration and construction, and to preserve them for future generations.

Mr. Jack Thomson, Executive Director of the Preservation Society of Asheville and Buncombe County, also expressed their appreciation for the work of the students from the Program, as the Program has promoted Asheville as the place to learn the importance of historic resources through professional appreciation and craftsmanship. He strongly encouraged the

current administration at A-B Tech to work with the preservation community in Asheville to develop a re-tooled restoration program.

**II. CONSENT AGENDA:**

At the request of Councilman Smith, Consent Agenda Item "D" was removed from the Consent Agenda for discussion and/or an individual vote.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 14, 2011**

**B. RESOLUTION NO. 11-125 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION TO THE N.C. DEPT. OF COMMERCE FOR NEW URBAN PROGRESS ZONES WITHIN THE CITY OF ASHEVILLE**

Summary: The consideration of a resolution authorizing the City Manager to submit an application to the North Carolina Department of Commerce for new Urban Progress Zones within the City of Asheville.

In July of 2006 the NC General Assembly passed legislation (House Bill 2170) that created a new business tax credit program, replacing the William S. Lee credits, which were repealed for business activities that occurred on or after January 1, 2007. The newer program is called Urban Progress Zones.

On July 24, 2007, Asheville City Council passed a resolution authorizing the City Manager to submit an application for state designation of Urban Progress Zones (UPZs).

The application was successful and two zones were designated, and renewed the following year. In 2010, City staff performed a review of the effectiveness of the designated UPZs and found that very few businesses were taking advantage of it. Staff proposed that to increase effectiveness of the program and stimulate economic development 1) new zones should be created that expand the number of eligible businesses in the zones and 2) staff should collaborate with area economic development partners on a marketing initiative for the UPZ program. The action requested of Council today is to support proposal #1, the creation of new zones. Staff in the Information Technology Department provided the technical resources to create zones that better leverage the State of North Carolina's requirement that only fifteen percent of a municipalities land area can be used as an Urban Progress Zone. As a result, businesses that were formerly not located in the City of Asheville's zones, specifically those in East Asheville/Tunnel Road and West Asheville/Haywood Road and Patton Avenue, will now be eligible for the credit , providing they meet the NAICS coding and other requirements established by the State. Staff notes that the final Central and Western UPZ may or may not include the Westside Industrial Business Park located at 150 Westside Drive. The Industrial Park is shown as included in the current map; however as it is part of the City's jurisdiction but not within the City's primary jurisdictional area, the City will have to request that the Secretary of Commerce allow this interpretation of the Urban Progress Zone guidelines.

The Urban Progress Zone designation is compliant with the 2010-2011 Strategic Plan in the following areas: (1) Job Growth and Community Development: Support a strong local economy by continuing to implement sustainable growth; and (3) Fiscal Responsibility: Hold the line on taxes and support tax and fee relief. In addition, this action is in alignment with the City's adopted 2020 Plan, specifically as it applies to supporting Smart Growth and Infill Development.

Pro:

- This action will provide incentives for business growth and investment within targeted commercial and mixed use communities.

Con:

- Must reapply or renew each year.

Urban Progress Zones do not require city investment beyond identification of eligible zones and preparation or renewal of application. Credits are applied only to state taxes.

City staff recommends City Council approve a resolution authorizing the City Manager to submit an application to the North Carolina Department of Commerce for two new Urban Progress Zones within the City of Asheville.

Councilman Davis noted that with these Urban Progress Zones come some tax opportunities for businesses in these zones.

**RESOLUTION BOOK NO. 34 – PAGE 57**

**C. RESOLUTION NO. 11-126 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AMENDED ADOPT-A-PARK AGREEMENT WITH JUST FOLKS**

Summary: The consideration of a resolution authorizing the City Manager to sign an amended Adopt-a-Park Agreement with Just Folks to include a waiver for park use fees for Triangle Park for Fiscal Year 2011-2012.

Just Folks is a local non-profit organization whose primary purpose is to support community-building activities in the Eagle/Market Street area. The members of the Board of Directors are all residents who grew up in the area and are actively engaged in efforts to improve the environment in Triangle Park by providing more positive uses of the park. Their focus on Triangle Park began seven years ago when they were encouraged to produce cultural events in the park by a past City of Asheville Cultural Arts Superintendent. They have received support from the City in the form of park use fee and permit waivers for the past seven years for events that have included music festivals, community cookouts and other community-building events in the park May to December on Saturdays and Sundays. The events are free and open to visitors and community members.

In addition, they have a presence in the park at other times and organize workdays to clean up the park. This past spring, they signed an Adopt-a-Park agreement with the Parks, Recreation, and Cultural Arts Department to formalize their partnership with the City to adopt the park year round. As part of that agreement, the group agreed to:

- Conduct regular clean-ups
- Weed and maintain the planted beds
- Mulch paths and planting beds
- Provide volunteers to participate in these and other projects
- Provide the tools and materials to carry out regular maintenance and special approved projects

Just Folks is currently in the process of partnering with the Asheville Design Center and the city to develop a planting plan and carry out a mural project and other improvements in the park. Their presence and activities in the park have contributed to the reduction of nuisance behaviors in and around the park and improved the appearance of the park, thereby making it more attractive to downtown visitors and community members and meeting specific City Council goals for economic and community development

In Fiscal Year 2011-12, Just Folk is planning to hold two events each weekend during the course of the year. These include music events and community cookouts which are free

and open to everyone in the community. They are interested in holding events year round in the park and anticipate a total of 45 events for approximately 195 hours of programming.

Because of the group's partnership agreement with the City, and the direct relationship of their efforts to City Council goals and objectives, staff is recommending that the City amend its Adopt-a-Park agreement with Just Folks to include the waiver of park usage fees for the programming described. The nature of the group's programming meets a public purpose and the City's stated goals to partner with "sister agencies" to extend public programming in targeted areas.

This recommendation was presented to the Council Finance Committee at their May 24 meeting. Members of the Finance Committee unanimously supported the recommendation and approved its consideration with the full City Council.

This action complies with the City Council Strategic Operating Plan to be one of the safest and most secure communities compared to similar cities.

Pros:

- The events held by Just Folks in Triangle Park proactively promote positive community interactions in the area and have significantly improved public safety in "The Block".
- Strategic partnerships allow the city to leverage programming and events to reach a wider and more diverse audience.
- Provides additional quality cultural programming and diversity in a park that is generally not used for this type of event.
- Reduces staff time in processing fee wavier requests related to this group's events.
- This action is consistent with other partnerships the City has entered into for park programming in key community development areas.

Cons:

- The reduction in permit fees result in lost revenue for the city; however, the city has not budgeted for this revenue in Fiscal Year 11-12.

The estimated value of the waived park usage fees is $2,500; however, this revenue has not been included in the Fiscal Year 11-12 budget.

Staff recommends that City Council authorize the City Manager to sign an amended Adopt-a-Park Agreement with Just Folks to include a fee waiver for park usage fees associated with programming in Triangle Park.

**RESOLUTION BOOK NO. 34 – PAGE 60**

**D. RESOLUTION TO SUPPORT THE N.C. DEPT. OF TRANSPORTATION IN FUNDING, DESIGNING, AND CONSTRUCTING A SIDEWALK ALONG US 70 (TUNNEL ROAD) FROM THE VA HOSPITAL TO THE VETERAN'S QUARTERS IN EAST ASHEVILLE**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**E. RESOLUTION NO. 11-128 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER FOR PATTON CONSTRUCTION GROUP, LLC, FOR THE VIEWMONT ACRES WATER SYSTEM EXTENSION PROJECT**

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Summary: The consideration of a resolution authorizing the City Manager to execute a change order in the amount of $23,413.24 to increase the construction contract for Patton Construction Group, LLC, from $294,950.00 to $318,363.24 for the Viewmont Acres Water System Extension Project.

On June 8, 2010, City Council awarded the construction contract to Patton Construction Group, LLC, for the Viewmont Acres Water System Extension Project. The City of Asheville has received a grant from N.C. Dept. of Environment and Natural Resources (NCDENR) to replace the existing, private, failing water system at the Viewmont Acres Mobile Home Park. Upon completion of the water system improvements project, the City of Asheville will own and maintain this new water system. The project consists of the construction and installation of approximately 2,850 Linear Feet of a new 8-inch waterline, fire hydrants, valves, and other appurtenances as well as the installation of five (5) private residential booster pump stations.

In order to complete the construction and close out the project, a change order is needed to increase the contract amount by an additional $23,413.24 for a total contract amount of $318,363.24. The change order is needed because of overruns to the original quantities estimated and to cover changes to the scope of the work, which were requested through work change directives issued by the Water Resources Department. These work change directives were necessary to accommodate unknown conditions, which were discovered during construction. There is sufficient budget within this project to fund the needed change order, so no budget amendment is required.

This project is part of City Council's strategic plans to improve city infrastructure.

Pros:

- Approval of the change order will allow the city to complete construction of the water system and close out the project, which will provide twenty-three (23) customers with a safe reliable drinking water source and much improved fire protection.
- The contract amount is fully reimbursable by the committed grant money, including the change order amount.

Con:

- If the change order is not approved, it would lead to forfeiture of part of the NCDENR grant funds and the existing failing private water system would not be upgraded.

The Water Resources Department will initially fund the construction cost of $318,363.24 (includes the change order amount) for this project until full reimbursement is received from the State. Funds for these upfront costs are already included in the Water Resource's Capital Improvement Program budget. Cost summary until reimbursement:

| | |
|---|---|
| Viewmont Acres Construction Budget | $582,171.00 |
| Original Construction Amount | $294,950.00 |
| Amount Remaining in Const. Budget | $287,221.00 |
| Change Order Amount | $ 23,413.24 |
| Amount Remaining After Change Order | $ **263,807.76** |

After the project is completed and closed out, the remaining funds will be returned to the Water Resource's Capital Reserve Fund for reallocation to a current or future capital project. Staff will seek Council approval on any future reallocation of these funds.

City staff recommends City Council approval of the resolution authorizing the City Manager to execute a change order in the amount of $23,413.24 to increase the construction contract for Patton Construction Group, LLC, from $294,950.00 to $318,363.24 for the Viewmont Acres Water System Extension Project.

**RESOLUTION BOOK NO. 34 – PAGE 62**

**F. RESOLUTION NO. 11-129 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER FOR T&K UTILITIES INC. FOR THE RICEVILLE FOREST TANK PROJECT**

**ORDINANCE NO. 3987 - BUDGET AMENDMENT FOR RICEVILLE FOREST TANK PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a change order in the amount of $35,470.00 to increase the construction contract for T&K Utilities, Inc., from $289,535.06 to $325,005.06 for the Riceville Forest Tank project; and the associated budget amendment in the amount of $10,006 from existing water capital project funds.

Review: On October 26, 2010, City Council awarded a construction contract to T & K Utilities, Inc., for the Riceville Forest tank project, located in the Riceville Forest Subdivision in East Asheville off of Riceville Road. The work consists of the demolition and disposal of the existing 19,000 gallon steel ground storage reservoir, construction of a new 97,000 gallon glass fused to steel reservoir, installation and operation of a 21,000 gallon temporary water storage tank with temporary booster pumping system for 3 existing residences, and construction and installation of approximately 370 linear feet of 6-inch ductile iron pipe with related appurtenances.

In order to complete construction and close out the project, a change order is needed to increase the contract amount by $35,470.00 for a total contract amount of $325,005.06. The change order is needed because of overruns to the original quantities estimated and to cover changes to the scope of the work, which were requested through work change directives issued by the Water Resources Department. These work change directives were necessary to accommodate unknown conditions, which were discovered during construction. To provide the necessary budget authorization for this change order, the project budget for the Riceville Forest Tank project will need to be increased by $10,006.

This project is part of City Council's strategic plans to improve city infrastructure.

Pro:

- Approval of the change order will allow the city to complete construction of the new water tank and close out the project.

Con:

- If the change order is not approved, the project will not be completed and it could incur more costs due to time delays.

Fiscal Impact: The Water Resources Department has a Riceville Forest Tank capital project in which funds are specifically reserved for this project. A budget amendment is needed to increase the project budget in order to cover the additional funds needed. The additional funds needed for the change order will be reallocated from the Reynolds Mobile Home Park Water System Improvement project, which was recently completed and closed out.

| | |
|---|---|
| Riceville Forest Tank Construction Budget | $315,000.00 |
| Original Construction Amount | $289,535.06 |
| Amount Remaining | $ 25,464.94 |
| Change Order Amount | $ 35,470.00 |
| Budget Amendment Needed | $- 10,005.06 |

Recommendation: City staff recommends City Council approval of the resolution authorizing the City Manager to execute a change order in the amount of $35,470.00 to increase the construction

contract for T&K Utilities, Inc., from $289,535.06 to $325,005.06 for the Riceville Forest Tank project, and the associated budget amendment in the amount of $10,006 from existing water capital project funds.

**RESOLUTION BOOK NO. 34 – PAGE 63**
**ORDINANCE BOOK NO. 27 - PAGE 81**

**G. RESOLUTION NO. 11-131 - RESOLUTION AUTHORIZING THE CITY MANAGER TO DELY THE IMPLEMENTATION OF THE RECENTLY APPROVED FEE CHANGE FOR TRANSIT PASSENGER FARE TICKET BOOKS**

Summary: The consideration of a resolution authorizing the City Manager to delay the implementation of the recently approved fee change for transit passenger fare ticket books.

The passenger fare structure for the Asheville Transit System consists of a $1.00 per ride option and various pre-paid, discounted options including ticket books, monthly passes, annual passes, and bulk fares. Typically, passenger fares provide about 15% of the total annual operating budget.

The current ticket book includes 11 tickets and costs $9.00 per book, which equates to $0.82 per ticket. The change for Fiscal Year 2011-12, which was approved by City Council on April 12, 2011, includes 10 tickets at a cost of $9.00 per book. The change equates to $0.90 per ticket. Please note that the actual price of the ticket book is not changing, only the number of tickets included in each book.

Shortly after the change was approved, staff learned that a fare increase analysis is required by the Federal Transit Administration to ensure compliance of Title VI of the Civil Rights Act. Staff is asking that the subject fare increase be delayed until the Federal Transit Administration reviews and approves it. Once the fare increase is approved by the Federal Transit Administration, staff will then implement it.

This action complies with the current City Council Strategic Operating Plan by enhancing the affordability of the Asheville Transit System's passenger fare structure.

Pros:

- The City would comply with Title VI of the Civil Rights Act as it relates to the Federal Transit Administration policies.
- The Transit Master Plan recommends bringing discount fares closer to industry standards.

Con:

- Maximum potential monthly revenue loss is about $102 (based on current customers that purchase ticket books).

Since the actual price of a ticket book would not change, it is difficult to predict the actual fiscal impact. The maximum potential monthly revenue loss is about $102 (based on current customers that purchase ticket books).

Staff recommends that City Council approve a resolution authorizing the City Manager to delay the implementation of the recently approved fee change for transit passenger fare ticket books.

**RESOLUTION BOOK NO. 34 – PAGE 65**

**H. RESOLUTION NO. 11-132 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH USCOC OF GREATER NORTH CAROLINA, LLC FOR AN IN-HOUSE REPEATER AT 70 GASHES CREEK ROAD, ASHEVILLE, N.C.**

Summary: The consideration of a resolution authorizing the City Manager to execute a Lease Agreement with USCOC of Greater North Carolina, LLC for antennas at 70 Gashes Creek Road, Asheville, N.C.

The City of Asheville operates a Facilities Maintenance Division at the building located at 70 Gashes Creek Road. The cellular coverage at that location is poor, and USCOC of Greater North Carolina, LLC (aka US Cellular) has offered to install up to four antennas, one donor antenna and one repeater at that site to boost the cellular signal. The antennas will be placed on the building rooftop and in the interior ceiling of the building. USCOC has offered to enter into a lease agreement for a term of five years, with a five year renewal at no cost.

The Notice of Intent to enter into a Lease Agreement with USCOC was published on June 28, 2011, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the Lease Agreement is being requested.

This action complies with the City Council Strategic Operating Plan by contributing to fiscal responsibility. By allowing USCOC to place their equipment in a portion of the building for these antennas, the City will improve the cellular signal for employees without purchasing any additional equipment.

Pro:

- Enhanced cellular signal for city employees at Gashes Creek Road

Con:

- None

No consideration contemplated for this lease, due to the direct benefit to the City. Avoids city expenditure on cellular equipment needed to boost signal.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute the lease agreement with USCOC of Greater North Carolina, LLC for antennas at 70 Gashes Creek Road, Asheville N.C.

**RESOLUTION BOOK NO. 34 – PAGE 66**

**I. ORDINANCE NO. 3988 - BUDGET AMENDMENT TO MOVE THE PURCHASE OF A FIRE AERIAL LADDER TRUCK FROM THE GENERAL FUND TO THE GENERAL CAPITAL PROJECTS FUND**

Summary: The consideration of a technical budget amendment, in the amount of $1,200,000, to move the purchase of a fire aerial ladder truck from the General Fund to the General Capital Projects Fund.

As a part of the FY 2010-11 Adopted Budget, City Council approved a budget of $1,200,000 for the replacement of a twenty-year old fire aerial ladder truck, with funding for the purchase coming from the issuance of debt proceeds. A formal bid was conducted in the current year, and Pierce Manufacturing Inc. was awarded the bid as the lowest responsive responsible bidder; however, the truck will not be delivered until FY 2011-12. Therefore, the City will not be issuing the debt associated with the purchase of the truck until after the start of the new fiscal year.

Since this transaction will be spanning two fiscal years, staff is recommending that the budget for the aerial ladder purchase be moved out of the General Fund and into the General Capital Projects Fund, which is a multi-year fund that is more appropriately designed for these types of transactions.

This action complies with the City Council Strategic Operating Plan goal of "Operate the City of Asheville to the highest levels of fiscal responsibility."

Pros:

- Provides the required budget authorization for the purchase of the fire aerial ladder to be made out of the multi-year General Capital Projects Fund.

Con:

- None.

This technical budget amendment moving the budget from one fund to another has no overall fiscal impact to City.

City staff recommends City Council adopt the technical budget amendment in the amount of $1,200,000 to move the purchase of a fire aerial ladder truck from the General Fund to the General Capital Projects Fund.

**ORDINANCE BOOK NO. 27 - PAGE 83**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Smith moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Manheimer and carried unanimously.

**ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

**D. RESOLUTION NO. 11-127 - RESOLUTION TO SUPPORT THE N.C. DEPT. OF TRANSPORTATION IN FUNDING, DESIGNING, AND CONSTRUCTING A SIDEWALK ALONG US 70 (TUNNEL ROAD) FROM THE VA HOSPITAL TO THE VETERAN'S QUARTERS IN EAST ASHEVILLE**

Summary: The consideration of a resolution to support the N.C. Dept. of Transportation in funding, designing, and constructing a sidewalk along US 70 (Tunnel Road) from the VA Hospital to the Veteran's Quarters in East Asheville.

The N.C. Dept. of Transportation (NCDOT) and the City of Asheville have been working together during the past year to construct sidewalks and install pedestrian crosswalks and signals along US 70 (Tunnel Road) in the East Asheville area.

A project to install sidewalk along the north side of Tunnel Road between Avon Road and Governor's View Road and to install pedestrian signals and crosswalks at the intersection of Tunnel Road and Beverly Road was completed during December 2010. Currently, City forces are constructing a sidewalk along the north side of Tunnel Road between New Haw Creek Road and Avon Road and the subject project should be completed by July 2011. The NCDOT is currently constructing a sidewalk along the south side of Tunnel Road between the Asheville Mall

and New Haw Creek Road with a private contractor and it should be completed during July 2011. The NCDOT will also install pedestrian signals and crosswalks at the intersection of Tunnel Road and Crocket Avenue/New Haw Creek Road to connect the two sidewalks.

Monies are included in the City's Capital Improvement Plan for Fiscal Year 2011-12 to construct a sidewalk along the north side of Tunnel Road between Governor's View Road and Maple Springs Road and the NCDOT is currently seeking a "Safe Routes to School" grant to fund a sidewalk along the north side of Tunnel Road between Maple Springs Road and Craig Circle. Once all of these projects are completed, which should be by the end of Fiscal Year 2011-12, there will be a pedestrian network connecting downtown Asheville to the Veteran's Quarters (assuming the subject project is approved).

This action complies with the City Council 2010-11 Strategic Operating Plan within the Fiscal Responsibility Area by leveraging internal and external partnerships for pursuing capital improvements and infra-structure projects. In addition, the subject action will enhance the pedestrian experience by providing a safe place to walk.

Pros:

- The NCDOT will fund, design, and construct the sidewalk.
- Increases the City's inventory of completed sidewalk.
- Eliminates a "goat trail".
- Satisfies a need for a group of our well deserved veterans.

Con:

- The City will be responsible to maintain the sidewalk after it is constructed.

There will be no initial financial impact to the City, although the responsibility of maintaining sidewalks belongs to the Public Works Department. Funds are budgeted every fiscal year for sidewalk maintenance.

Staff recommends that City Council approve a resolution supporting the efforts of the NCDOT in funding, designing, and constructing a sidewalk along US 70 (Tunnel Road) from the VA Hospital to the Veteran's Quarters in East Asheville.

Councilman Smith emphasized the fantastic partnership among the City, NC DOT and the community to make this a high priority for the City.

Councilman Smith moved to adopt Resolution No. 11-127. This motion was seconded by Councilman Russell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 61**

## III. PRESENTATIONS & REPORTS:

### A. ASHEVILLE AREA RIVERFRONT REDEVELOPMENT COMMISSION UPDATE

Mr. Ricky Silver, Chairman of the Asheville Area Riverfront Redevelopment Commission (AARRC) said that the purpose of this update is to provide an overview of the AARRC's first year in operation and to provide the Commission's first general recommendations to City Council.

The AARRC (the City-initiated Commission charged with promoting the sustainability and continued development of the riverfront) has been meeting for a period of one year. Mr. Silver presented the following information to City Council: an explanation of membership; an overview of their study area; the nature and direction of their research and other work during their first year; and what to expect from the Commission in the future.

Chairman Silver then presented the following recommendations for consideration by Council:

1) Strengthen the City's physical investment in the Riverfront District. In addition to recognizing the need to support sustainable development via focused and coordinated investments in infrastructure like sidewalks and water lines, consider locating appropriate City employment centers or offices within the district to support the Riverfront District as a great place to work. Additionally, consider playing a leadership role in a public private partnership for a redevelopment or rehabilitation project.
2) Hire a consultant to perform a review of regulations and policies affecting redevelopment in the riverfront. This person, who should be an expert or have substantial experience in urban waterfront redevelopment, can provide the City and her partners with an overview of what helps and what hurts the community's vision implementation.
3) Acknowledge that a larger, more professionally driven redevelopment effort will eventually be needed to implement the community's vision for the riverfront. The AARRC, as a volunteer driven, City created advisory board will not be the appropriate structure to best manage and coordinate twenty to thirty years of complex development projects totaling hundreds of millions of dollars. The Commission expects (over the course of the next two years) to build the trust and partnerships needed to provide a successful base for a riverfront specific development company (or other type of organization) led by an executive director and other professional staff.

Recommendations one and two strongly align with the Job Growth and Community Development section, specifically, to support the riverfront redevelopment partnership and formation of a dedicated office, and to promote sustainable, high-density, infill growth that makes efficient use of existing resources. Recommendation three is in alignment with the Fiscal Responsibility section, specifically, to explore alternatives for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities.

Pro

- AARRC recommendations are in alignment with national best practices in urban waterfront revitalization programs; adopting them will further progress in the City's own program.

Con:

- AARRC recommendations require identification of funding.

Costs to support implementation of recommendations vary and can be explored based on the interest level of Council.

Council could indicate which recommendation(s) staff should pursue.

Councilman Davis, liaison to the AARRC, spoke about this very active Commission and was excited about what they have accomplished in one year.

In response to Councilman Smith, Mr. Silver said that the AARRC will work through staff to bring a plan forward to Council regarding hiring a consultant to perform a review of regulations and policies affecting redevelopment in the riverfront.

In response to Mayor Bellamy on what next steps the community can expect, City Manager Jackson said that he would provide Council with a compilation of AARRC's work plans so they can see the depth of work being accomplished.

When Mayor Bellamy asked about the fence being taken down and the re-alignment and re-naming of the road, Mr. Silver said that RADTIP will be making a recommendation and they have been very involved in that process. He said there are a lot of small projects happening in the area without their intervention and they don't want to get in the way of those projects.

On behalf of City Council, Mayor Bellamy thanked Mr. Silver and the entire AARRC for their hard work and efforts on this very important Commission.

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON 626 HAYWOOD ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS II DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL ZONING FOR THE EXPANSION OF THE EXISTING RESTAURANT SITE TO ACCOMMODATE ADDITIONAL PARKING AND DUMPSTER LOCATION WITH A MODIFICATION REQUEST TO LANDSCAPE BUFFER WIDTH**

**ORDINANCE NO. 3989 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED ON 626 HAYWOOD ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS II DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL ZONING FOR THE EXPANSION OF THE EXISTING RESTAURANT SITE TO ACCOMMODATE ADDITIONAL PARKING AND DUMPSTER LOCATION WITH A MODIFICATION REQUEST TO LANDSCAPE BUFFER WIDTH**

Mayor Bellamy opened the public hearing at 5:30 p.m.

Urban Planner Nate Pennington said that this is the consideration of an ordinance to conditionally zone property located on 626 Haywood Road from RM-16 Residential Multi-Family High Density District and Community Business II District to Community Business II District/Conditional Zoning for the expansion of the existing restaurant site to accommodate additional parking and dumpster location with a modification request to landscape buffer width. This public hearing was advertised on June 17 and 24, 2001.

Mr. Pennington said that the applicant is requesting a Conditional Zoning for one (1) parcel zoned Community Business II (CB II) and RM-16 Residential Multi-Family High Density to (Community Business II/Conditional Zoning (CB II/CZ) for the expansion of the Sunny Point Café site in accordance with Section 7-7-8 of the UDO.

The project site consists of one split zoned parcel comprising 0.66 acres according to the submitted site plan. The existing Sunny Point Café is located on the corner of Haywood Road and State Street with an off-street parking lot located behind the restaurant and accessed via State Street. The restaurant and main parking lot were permitted in 2002 and a permit was issued in 2009 to cover the outdoor seating area along the State Street side of the restaurant. A single-family residence is also located on the property to the south (behind) the restaurant. This home, while located on CB-II property, has historically been used for residential purposes and is not a commercial structure. To the south of the residence is an unpermitted gravel parking lot created (primarily) for employee parking. The dumpster for the restaurant was located within this gravel lot as well. As part of the conditional zoning request, the applicant is seeking to legitimize the parking lot, allow for the relocation of the dumpster as recommended by the Planning and Zoning Commission (see below) and establish an office in the residence.

The property owner was issued a Notice of Violation by the Planning Department Code Enforcement Staff on March 24, 2011 for failure to secure zoning and building permits for 1) the

use of the vacant single-family residence as an office and, 2) the use of the RM-16 zoned portion of the property for an off-street parking lot and dumpster location (the dumpster was previously located behind the restaurant). To remedy this violation, the owner was informed to either cease commercial operations on the residentially zoned property or apply for a conditional zoning. As an interim measure, the restaurant temporarily ceased parking on the gravel lot and relocated the dumpster to the southern side of the residence on the commercial portion of the property.

Vehicular access to the existing and proposed parking lots is gained via State Street. Pedestrian access to the site is provided along both Haywood Road and State Street where sidewalks currently exist.

According to the site plan and the information provided by the applicant, a minimum of 27 off-street parking spaces are required including the necessary accessible spaces. The CB-II district allows for a 20% reduction to off-street parking, resulting in a minimum of 22 spaces required. The site plan illustrates the minimum 22 spaces required which will be brought into compliance with parking standards if the conditional zoning request is approved. A bike rack capable of accommodating 5-6 bikes already exists onsite and satisfies the required bicycle parking standards.

Street trees currently exist along Haywood Road and a portion of State Street. Three additional street trees will be installed along State Street and additional parking lot landscaping will be required in the area of the proposed parking lot to the west and south of the single-family residence. A 20' wide type "A" vegetative bufferyard is required along the southern and western perimeter of the portions of the property where the new parking lot and dumpster pad have been sited. A modification request to this standard is being sought (see below).

The open space requirement for this type of development is 5% of the total site size; a total of 1,437 square feet for this site. The site plan illustrates that 1,438 square feet has been reserved to meet this requirement.

The applicant is requesting a total of one (1) modification to the site plan which must be approved by City Council. The staff supports the request.

1. *Property Line Buffer* – Section 7-11-3(d)(1) of the UDO requires bufferyards to be installed for proposed developments adjacent to dissimilar zoning designations to provide a transition between districts of varying intensities. In this case, a 20 foot wide bufferyard will be required along the southern and western perimeter of the portion of the property where the new parking lot and dumpster pad have been sited. Sunny Point Café utilizes a large majority of undeveloped property for gardening in order to produce fruit, herbs and vegetables for the restaurant. Given this scenario, the applicant is requesting reduced buffer widths so as not to shade out the areas used for gardening. In lieu of not providing a full 20 foot buffer width, the alternative proposed is to provide a ten (10) foot buffer with a solid six (6) foot fence facing the adjoining properties. **The staff supports the request to reduce the landscape buffer due to the passive use of the garden and the distance between the parking area and adjoining property.**

This proposal was recommended for approval with conditions by the Technical Review Committee on May 16, 2011. A neighboring property owner expressed concerns regarding the location of the dumpster, proposed dumpster screening, parking, buffer width, the size of required plantings and outdoor lighting (no lighting is proposed).

At their regularly scheduled meeting on June 4, 2011, the Planning and Zoning Commission reviewed this project and was advised of the staff's concern about the potential negative impact the applicant's preferred location of the dumpster (originally proposed within the newly created parking area) may have on the adjacent condominium development located to the south of the parking area. (Refer to finding #4 below).

The Commission also heard public comment from a neighboring property owner who echoed staff's concerns regarding the proposed dumpster location and also had questions regarding the "no parking" signs that were installed along State Street and asked if they could be replaced by signs that would limit parking to specific hours. The staff directed the property owner to contact the City traffic engineer regarding this matter and the request is currently being explored by the traffic engineering staff.

Upon consideration of the concerns expressed about the dumpster location, both the applicant and the Commission agreed upon a new location for the dumpster and unanimously approved the project with the following additional conditions:

- The location of the dumpster is to be placed next to the single-family residence.
- The use of the dumpster is limited to non-food waste.
- The enclosure (screening in accordance with all UDO requirements) is to be large enough to accommodate the dumpster and the composting bins.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The project proposes the adaptive reuse of a single-family residence as well as a parking lot that would bring the property into compliance with off-street parking standards, given recent expansions in operations. The restaurant is compatible with the surrounding businesses along the Haywood Road corridor and has a pedestrian orientation along Haywood Road.

   The residential units to the southern and westernmost extent of the property will be buffered with a Class "A" bufferyard. While the bufferyard width would be reduced by ten (10) feet if the modification request is approved, a privacy fence will be installed facing the neighboring property owners and the parking lot would be further separated from the neighbors by the surrounding gardens and open space.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** As noted in Finding #2, the proposed development is compatible with surrounding commercial uses and the residential nature of the property to the south and west of the parking lot will be buffered by additional vegetation, open space and gardens. There is concern, however, about the proposed location of the dumpster and the potential for negative impacts (noise, pests, commercial pick-up activity and odor) it may have on adjacent residential uses.

   The Planning & Zoning Commission approved the plan with the dumpster relocated to the south side of the converted residence with added conditions and this location should sufficiently address the potential impacts. This location also is satisfactory to the

residents to the south, as that development is more than 100 feet from the dumpster enclosure and will be buffered by vegetation and a solid privacy fence.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The site is located within the Haywood Road commercial corridor. The restaurant itself is oriented towards Haywood Road and is consistent with both the existing zoning and character of the Haywood Road commercial corridor in which it is located. The restaurant structure includes a small second story residence. The existing single-family detached residence that will adjoin the staff parking lot and a garden is proposed to be converted from a residence to an office. The preservation of the character of the existing single family residence combined with the limited impact/activity of a small restaurant office also helps to provide a transition from the busy commercial activity to the nearby residential uses. While additional parking is proposed along State Street, the parking lot is small in nature (6 spaces) and will be mitigated by factors including additional vegetation, a fence and garden/open space areas separating the adjacent residential properties.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** Elements of the proposal are aligned with the City's goals and objectives as noted in the Compliance with Comprehensive Plan and other Adopted Plans section (listed above). Specifically, the expansion of uses associated with the restaurant is consistent with the goals of infill development along an established commercial corridor. However, these goals must be balanced against other goals related to the preservation of the character of Asheville's working class neighborhoods which tend to be more vulnerable to commercial encroachment.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** The site is located at the intersection of Haywood Road and State Street and is within approximately .25 miles of an entrance to I-240. A City of Asheville bus stop is located next door in front of the Lucky Otter restaurant to accommodate public transportation at the intersection of Haywood Road and Nevada Avenue. Adequate water supply, fire and police protection, and other city services are verified during the TRC review process.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The subject project will not adversely impact the surrounding street network from a traffic engineering perspective.

Based on the above findings and the analysis provided in the report, staff finds this request, with conditions noted, to be reasonable.

Pros:

- Provides an opportunity to mitigate a split zoned commercial property and bring the site into compliance with UDO standards.
- Provides an opportunity to rehabilitate and adaptively re-use a single-family residence located in a commercially zoned district.

Con:

- There is no perfect location for the dumpster in this fairly urban location as it would need to be closer to adjacent residences to the west or to the south, or closer to the restaurant outdoor seating area.

Staff recommends approval of the project as submitted by the applicant and modified by the Planning and Zoning Commission, including the modification to reduce the bufferyard width.

Mr. Tony Hauser, representing the owner, was available to answer questions.

Ms. Emily Harrell urged Council to support the expansion as Sunny Pointe Café is an integral part of west Asheville.

A west Asheville homeowner supported the conditional zoning as the Café creates goodwill in the community.

Ms. April Moon, speaking on behalf of Sunny Pointe Café, spoke in support of the conditional zoning in that it was never their intent to be out of compliance. She asked that the modification be granted as more landscape buffering would destroy their garden.

Mayor Bellamy closed the public hearing at 5:39 p.m.

City Attorney Oast reminded Council that if the property is conditionally zoned it may not always be Sunny Pointe Café on that property.

In response to Mayor Bellamy regarding the possible odor of the composting drifting into the residential neighborhood, Ms. Moon said that a local business picks up their compost three times a week and the composting is covered. She had heard no complaints from neighbors at this time.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith moved for the adoption of Ordinance No. 3989, to conditionally zone property located on 626 Haywood Road from RM-16 Residential Multi-Family High Density District and Community Business II District to Community Business II District/Conditional Zoning for the expansion of the existing restaurant site to accommodate additional parking and dumpster location with a modification request to landscape buffer width. subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures (including wall packs) and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application (single family structure must retain its residential character). Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project shall undergo final review by the TRC prior to issuance of any required permits; (6) The use of the dumpster is limited to non-food waste; and (7) Dumpster enclosure shall be large enough to accommodate covered compost containers. This motion was seconded by Councilman Russell and carried unanimously.

**ORDINANCE BOOK NO. 27 - PAGE 85**

**B. PUBLIC HEARING TO CONSIDER REZONING 380 LONG SHOALS ROAD AND 6 SCHENCK PARKWAY FROM CENTRAL BUSINESS DISTRICT TO HIGHWAY BUSINESS DISTRICT**

**ORDINANCE NO. 3990 - ORDINANCE REZONING 380 LONG SHOALS ROAD AND 6 SCHENCK PARKWAY FROM CENTRAL BUSINESS DISTRICT TO HIGHWAY BUSINESS DISTRICT**

Due to a conflict of interest, Councilman Russell moved to recuse Councilwoman Manheimer from participating in this matter. This motion was seconded by Councilman Davis and carried unanimously. At this time, Councilwoman Manheimer left the Chamber.

Mayor Bellamy opened the public hearing at 5:41 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone 380 Long Shoals Road and 6 Schenck Parkway from Central Business District to Highway Business District. This public hearing was advertised on June 17 and 24, 2011.

The subject properties are prominently located at the beginning of Schenck Parkway (the entrance to Biltmore Park Town Square), and represent the first developed site one encounters on the north side of Long Shoals Road when heading east from the I-26 interchange. The relevant history of construction and zoning around the site goes back more than ten years.

The site was developed with a gas station, convenience store, and restaurant in 2000. At that time, the applicant (and operator of these businesses) owned a leasehold for the site of this development, but the land was owned by Biltmore Commercial Properties, LLC. None of the site was then in the City of Asheville's zoning jurisdiction; a portion was in the Buncombe County Limestone Township zoning area—zoned Commercial Services, and a part was not zoned.

In 2001, the City of Asheville expanded its ETJ, and the unzoned portion of the land came into the City's zoning jurisdiction. CBD zoning was applied to the area west of Schenck Parkway as this most closely resembled the existing Town Center buildings already developed under the County's jurisdiction. (The City's Urban Village zoning district did not yet exist.)

In February 2006, the Master Plan and related zoning change (to Urban Village) for the Biltmore Park Town Square west of Schenck Parkway was approved. The subject properties were not included, as the plans did not effect any changes thereon.

In 2007, the subject properties were part of an annexation by the City of Asheville. The annexation became effective in late 2007, and discussions ensued about assigning a zoning district for the portion of the site which had been in the Buncombe County zoning area. City staff proposed zoning a 10+ acre area, including the entire site, to Highway Business, to be consistent with the other three corners at the intersection. The landowner (Biltmore Commercial Properties, LLC), however, preferred to maintain the pre-existing CBD zoning, as it provided more options (e.g. building height, residential density) for a future extension of higher impact uses consistent with the nearby urban village, without having to submit a master plan. The CBD zoning became effective for the entire site in early 2009.

Meanwhile, by summer of 2008, the applicant's gasoline sales operation had been affected by the widening of the Long Shoals Road right-of-way taking place as part of the construction of the new interchange. The pumps and canopy had to be removed from the southern edge of the site. When investigating the potential for relocating the pumps, the applicant learned that the CBD zoning not only doesn't ordinarily allow retail gasoline sales, but has building design and setback requirements that would preclude the type of construction he sought to pursue. In 2009, the applicant successfully applied for and received variances to allow the placement of pumps and a canopy on the east side of the site. (The construction of this part of the project was completed earlier this year.)

In December 2010, the 10+ acre parcel on which the site is located was subdivided, and the subject properties were sold to the applicant. Now as the owner (not simply the leaseholder) of the property, the applicant has requested rezoning of his properties to Highway Business. If approved, the rezoning would eliminate most, if not all, of the design-related and use-related nonconformities that currently exist. The applicant would also be able to obtain a permit for the

sort of pylon sign he would like to erect, and would be able to redevelop or adapt the site with similar highway-oriented uses without having to seek special approvals from the Board of Adjustment.

As is mentioned above, staff feels that Highway Business would be the most appropriate zoning for the subject properties, together with the 8+ acres of area to the north and west that are also zoned CBD. The owner of the neighboring CBD properties (Biltmore Commercial Properties, LLC) was contacted about expanding the area of this proposed rezoning to include their property as well. Their representative, Paul Szurek, indicated willingness to support such an expansion, but only if conditions could be added to the rezoning. Because the standard rezoning application submitted by the applicant (unlike a conditional zoning petition) does not allow the imposition of special conditions, the neighboring properties were not included.

As such, the proposed rezoning, if approved, would leave a remnant of the CBD zoning wrapped around the back of the subject properties zoned Highway Business. The placement of a district promoting urban, multi-story, high-density, pedestrian-friendly design tucked behind an area (at the corner of a major intersection) with a suburban corridor zoning district and developed with suburban, single-story automobile-oriented businesses is not an ideal outcome. Neither, however, is the existing situation, where a property owner is burdened by a zoning district incompatible with his legally established uses while his neighbors at the other three corners of the same intersection enjoy the type of development standards he seeks.

Additionally, the proposed rezoning would strand a small area zoned CBD on the east side of the subject area. Owned by the Biltmore Park Commercial Association, Inc. (affiliated with the Biltmore Commercial Properties, LLC), and about 0.03 acres in size, this parcel exists for the purpose of a sign, and its zoning is considered to be of less significance to staff. Further, the owner has indicated that they do not wish to participate in a rezoning at this time.

Staff's view is that the likely development opportunities for the entire 10+ acre area zoned CBD will be more in keeping with the HB standards, and staff is hopeful that the owners of the CBD-zoned properties adjacent to the subject area will also soon request a rezoning to HB.

At their June 1, 2011, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning. Other than the petitioner's agent, there was no comment from citizens at the public hearing, and staff has not received any communication from the public on this matter.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- HB zoning is highly compatible with the surrounding development and road system.
- Would alleviate multiple hardships for property owner.

Cons:

- Would create an adjacent zoning district in an awkward position with little potential for compliant development.

Staff feels that the proposed rezoning would unquestionably be an improvement for the subject property, however, it would clearly result in a less desirable situation on the adjacent property. Recognizing that the owner of the adjacent property relinquished ownership of the subject property, with knowledge of the development pattern that was in place, staff feels a case can be made for approval of the request.

Mr. Craig Justus, representing Henderson Oil Company, emphasized that this is the most appropriate zoning for the property. He asked Council to support the rezoning.

Mayor Bellamy closed the public hearing at 5:45 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3990. This motion was seconded by Councilman Davis and carried unanimously (Councilwoman Manheimer recused).

At this time, Councilwoman Manheimer re-entered the meeting.

**ORDINANCE BOOK NO. 27 – PAGE 89**

**V. UNFINISHED BUSINESS:**

**A. STATE LEGISLATIVE UPDATE**

City Attorney Oast said that the General Assembly adjourned from its 2011 Regular or "Long" Session on Saturday, June 18. It will reconvene on July 13 to consider a limited agenda, primarily including redistricting, but also to consider any ratified bills that were vetoed by Governor Perdue. He provided Council with a copy of the adjournment resolution.

He provided Council with a summary of some of the legislation of importance to municipalities generally has been prepared by the N.C. League of Municipalities. In the coming weeks, we will receive more detailed information from the League, the School of Government, and various professional organizations, and will report that information to Council as necessary.

**General Laws**

Among the laws that will have an effect on City operations are the following:

(a) Annexation. HB 845 was the bill that substantially revised the general annexation law. This will affect all future annexations. Significant changes include (1) a requirement that annexing cities install water and sewer connections to individual properties, and (2) a requirement that any annexation be subject to a "petitioned denial" process, whereby the property owners in the annexed areas can defeat the annexation with a petition from the owners of 60 percent of the parcels in the area. The Governor is expected to sign this bill.

(b) Required use of "E-verify." This law, HB 36, requires the use of "e-verify" by public employers. The City already requires "eligibility to work" verification, so this should not affect our hiring practices much. This will apply to local governments beginning October 1 of 2011. It also will apply to private employers, including our contractors, but implementation is delayed for at least a year. We will need to consider the implications for our contract process. The State Department of Labor has been given enforcement responsibility, and a complaint process is prescribed in the law, so the law helpfully addresses those persistent issues.

(c) Building Inspections. SB 683 affects the ability of cities to conduct regular inspections of some buildings on a programmatic basis. We are reviewing this law for its effect on the City of Asheville's inspection program.

**Local Laws**:

Developments of particular interest to the City of Asheville are summarized below:

(a) Local Annexations. HB 36 and SB 27. These are two other annexation laws that retroactively require that certain annexations in process (or even completed) be subject to the "petitioned denial" process outlined in the general law. This affects the Biltmore Lake annexation. This does not mean that the Biltmore Lake annexation is automatically undone yet; the petition process still has to be followed, and the necessary percentage must still be obtained. The Board of Elections is tasked with running that process, and it will start soon. The City must reimburse the costs of the petition process.

(b) Woodfin/Asheville Boundary Adjustment. As reported previously, we got pretty far with the bill that would adjust the boundary of Asheville and Woodfin in the UNC-A, 19-23/Broadway, and Reynolds Mountain entrance areas. However, the survey work revealed more issues that needed clearing up than we anticipated, and we ran out of time to finalize the surveys and descriptions before the General Assembly adjourned. This will be taken up again next year, and we can use all the work that we have done in that process.

(c) Asheville Airport. HB 552. This is the bill that would establish the Airport Authority as an independent authority, and require the conveyance of the Airport property (owned by the City; leased to current authority), without compensation. Council has discussed this at length, and has expressed its concerns to the legislature. This bill passed out of the House and is in the Senate, where it was referred to Committee. It remains eligible for consideration in the 2012 "Short" Session.

(d) Water System – MSD Merger. HB 925. This is the bill that would have required the City to convey the water system to MSD. After objection by Council, this bill was converted to a study bill, and passed out of the House. The Senate amended the bill and it was sent back to the House for concurrence, but the House failed to concur prior to adjournment. The study bill remains eligible for concurrence in the session that will convene on July 13.

Due to discussion regarding establishing a relationship with our legislators, Councilman Davis and Councilwoman Manheimer briefed Council on a meeting they had with Representative Moffitt last week. They talked about all the legislation that affects Asheville and our greater area. They brought forth Council's thoughts and believed that everyone left the meeting with a better understanding of each other. Other meetings with other legislators are being planned. They felt it was good to have Council reach out to our legislators.

Mayor Bellamy said that she will be travelling to Washington, DC, on an unrelated matter, and is in the process of arranging meetings with representatives at the White House and the Federal Dept. of Transportation to discuss the Federal Aviation Administration ruling as it relates to not paying the City due compensation for our Airport property. She is not supportive of the City not being fairly compensated if the Airport is going to leave our ownership.

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 11-133 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT THE CONVEYANCE OF REAL PROPERTY LOCATED AT 14 RIVERSIDE DRIVE FROM THE PUBLIC SERVICE COMPANY OF NC SUBJECT TO A N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES BROWNFIELDS AGREEMENT**

Ms. Stephanie Monson, Urban Planner for Economic Development, said that this is the consideration of a resolution authorizing the Mayor to accept the conveyance of real property

located at 14 Riverside Drive, from the Public Service Company of NC ("PSNC") subject to a North Carolina Department of Environment and Natural Resources Brownfields Agreement.

The Public Service Company of NC ("PSNC") owns real property at 14 Riverside Drive that includes 0.29 acres of River District-zoned land and a one story brick building that is a contributing structure to the Riverside Industrial National Historic District. The property is now vacant, however at one time, the building served as the operations office for a manufactured gas plant. This parcel is adjacent to the 30 Riverside Drive parcel to the north, which the City accepted as a donation of real property from Progress Energy in June 2008, after a lengthy environmental assessment and cleanup process in effort to mitigate the remnants of the gas manufacturing process.

Given the historical use, this property is an ideal candidate for the State of North Carolina's Brownfields Program. In October 2009, when the donation was first evaluated by staff, the City enrolled the PSNC building in the Brownfield Program. The required environmental assessments for the PSNC building are now complete and PSNC and Progress Energy have arranged for any needed clean up on the site. Once the clean up is completed the State will create a Brownfields Agreement for the site that absolves the City of any liability from previous environmental contamination. This agreement will be recorded as a deed restriction regarding potential uses for the site. The successful execution of said Agreement, in addition to the completion of a current parcel survey and title search being coordinated by the City's Legal Department, is considered by staff to be the remaining due diligence required before the City is prepared to accept the proposed donation of property.

The proposed acquisition of 14 Riverside Drive is part of the City's strategy to develop a continuous park/open space amenity along the west side of Riverside Drive as conceptualized in the Wilma Dykeman RiverWay Master Plan and other City-adopted plans. City staff has coordinated Brownfield Program efforts with RADTIP (River Arts District Improvement Project; Preliminary Engineering for a 2.2. mile section of the Wilma Dykeman RiverWay Master Plan) planning activities over the past twelve months. If Council agrees to accept this donation of property subject to completion of due diligence, staff intends to pursue the following actions in the area:

- Removal of the chain link and razor wire fence surrounding both the City-owned property at 30 Riverside Drive and the PSNC building;
- Planning and development of a low impact trail along City-owned and other properties on the west side of Riverside Drive to support pedestrian activity and safety in the area until the new (RADTIP) multimodal roadway is built;
- Phase II of Between the Bridges public involvement process for an expanded group of stakeholders.

This action complies with the City Council Strategic Operating Plan by contributing to fiscal responsibility - the partnership between the City, PSNC and the State Brownfields Program allows each entity to leverage assets to activate a vacant property along an emerging corridor. This action aligns with the goal of Green and Sustainable, furthering the City's opportunity to integrate and implement a multi-modal transportation plan that includes sidewalks, bike paths, signal preemption, transit, greenways, and other system improvements. This action also directly supports the implementation of the Wilma Dykeman RiverWay Master Plan and aligns with Parks Recreation and Greenways Master Plan and the City's 2020 Master Plan.

This item has been reviewed by the Asheville Area Riverfront Redevelopment Commission on May 19, 2011, and has received the Commission's endorsement.

Pros:

- The public ownership of this property improves the City's planning and implementation efforts to support the City's Riverfront Redevelopment Program, including the development of the Wilma Dykeman RiverWay and the Greenway system in general.
- The City will be absolved of liability through a completed Brownfield Agreement with the State of North Carolina

Con:

- An addition to the City's real property assets will require additional resources for development and maintenance.

No monetary consideration required for the conveyance. Any additional due diligence costs, including survey and title work, will be absorbed into the Economic Development Budget. The cost of removing the fence is estimated under $5,000 and will be done through a local contractor with budgeted funds. Any future impact regarding redevelopment is unknown; however the City is eligible for federal funding to support the planning and future rehabilitation of the building for public purposes. Any redevelopment options for the PSNC building will come before Council as part of the public process.

City staff recommends that City Council adopt the resolution authorizing the Mayor to accept real property located at 14 Riverside Drive (PIN # -96-7846-00000) from the Public Service Company of NC subject to a N.C. Dept. of Environment and Natural Resources Brownfields Agreement.

When Mayor Bellamy asked for public comments, none were received.

Councilman Davis said that his father worked the bulk of his adult life in that building and provided Council with some historical information of the property.

Mayor Bellamy thanked PSNC and Progress Energy for their partnership with the City of Asheville.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 11-133. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 67**

**B. RESOLUTION NO. 11-134 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH MCGILL ASSOCIATES FOR ENGINEERING SERVICES FOR THE LAKE CRAIG PROJECT**

Public Works Director Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to complete negotiations and sign a contract with McGill Associates for the engineering services necessary for completion of Phase I of the Lake Craig Project.

The City of Asheville has the opportunity to provide improved access to the Azalea Park along Azalea Road, provide a much needed water connection to the John B. Lewis Soccer Complex and to provide additional flood protection to Biltmore Village.

Azalea Park is a regional attraction that hosts a major soccer complex. This complex draws a wide range of the public which increases the traffic along Azalea Road. The City is proposing to widen and improve the roadway in this section. The City proposes to combine flood

control recommendations and utilize material from floodplain fill removal for the roadway improvements.

The City also plans to provide a much needed water supply connection to the Park. Currently, the pavilion does not provide a potable water source. The project will include connection to the City's water system.

The Hurricane Recovery Act of 2005 (Senate Bill 7) allocated funds for planning and implementation of projects to aid in flood damage reduction for North Carolina communities hardest hit by the 2004 hurricane season. Through a study performed by Brown and Caldwell, the Lake Craig Project has shown potential to provide significant flood reduction benefits. The flood control features of the project include stream relocation and restoration, removal of floodplain fill and flood bench restoration and the rehabilitation or replacement of an existing dam.

Within the scope of the project, McGill Associates will perform the engineering services necessary to provide improved roadway connections to the John B. Lewis Soccer Complex, provide a much needed connection to the City of Asheville water system, and to provide flood mitigations to the properties down stream of the Lake Craig Dam which will include the evaluations of the existing dam. The Lake Craig Project was the highest priority in the Swannanoa Flood Risk Management Project which was accepted by City Council on May 10, 2011.

On May 26, 2009, by Resolution No. 09-108, the City Manager was authorized to enter into a Feasibility Cost Share Agreement for the Swannanoa Flood Risk Management Project with the Army Corps of Engineers to provide professional services for a feasibility study for reducing flood damage in the Swannanoa River Watershed. That resolution will allow the City Manager to modify the existing agreement with the US Army Corps of Engineers allowing engineering services performed by McGill Associates to be utilized as matching work in kind funds for the Corps Feasibility Cost Sharing Agreement.

This action complies with the City's plans and commitments to administer $2.5M of Senate Bill 7 funding consistent with a contract executed with the North Carolina Division of Water Resources on April 1, 2007. In addition, this project has complied with the Council's Strategic to provide a safe community for our citizens.

Pros:

- Implements the priority objective of the Swannanoa Flood Risk Management Project
- Provides safe access for the citizens that visit this area
- Provides water to the soccer complex
- Priorities are set for expending the remainder of state flood mitigation funding and for pursuing future state and federal grant funding for this project.

Con:

- The City of Asheville currently does not have the funding to complete the construction phase of project. Construction/rehabilitation of the dam will require the involvement and funding of the US Army Corps of Engineers or the North Carolina Division of Water Resources.

Staff has budgeted $1,263,206 for the engineering services necessary to complete Phase I of the Lake Craig Project. Funding for this engineering services contract will come from a combination of remaining Senate Bill 7 money and capital funds made available from the water funds for work associated with the installation of water line infrastructure as permitted by state statute which are already budgeted in the Azalea Road capital improvement project. The total estimated cost for Phase I of this project, which includes the engineering services as well as the roadway, utilities, and river relocation construction is $4.15 million. The chart below shows the projected budget for Phase I. City Staff is working with the Army Corps of Engineers as well as

the North Carolina Division of Water Resources to identify future funding for the completion of the Dam construction which will be associated with Phase II of this project. These sources would require matching contributions from the City in order to secure these funds.

Typical engineering contracts range from 10 to 15 percent of the total project cost; the engineering services for this project are higher due to the need to determine the structural stability of the existing dam. The analysis of the dam will determine what design is required under the future Phase 2 of this project. There is also additional cost associated with the engineering services for the project due to detailed coordination with various agencies including the Army Corps of Engineers and FEMA.

City staff recommends City Council approve a resolution authorizing the City Manager to complete negotiations and sign a contract with McGill Associates for the engineering services necessary for completion of Phase I of the Lake Craig Project for up to $1,263,206.

Ms. Ball reviewed the following Lake Craig Project objectives (1) flood damage reduction in Biltmore Village (a) Restore/replace dam; (b) remove sediment/fill from floodplain; and (c) qualify project for additional Corps funding; (2) improve roadway access to Azalea Park/Gashes Creek neighborhood; (3) extend water service to John B. Lewis Soccer Complex; (4) relocate Swannanoa River to more efficient hydraulic alignment; and (5) identify future recreational/educational enhancements.

She then showed the conceptual plan. Lake Craig agency coordination included US Army Corps of Engineers; Federal Emergency Management Agency; N.C. Division of Emergency Management; N.C. Division of Water Resources; N.C. Division of Water Quality; and N.C. Dept. of Transportation.

Ms. Ball then used pie charts to explain the project expenditures and revenues.

Mr. Joel Storrow, representing McGill Associates and Project Manager of the Lake Craig Project, outlined the Lake Craig Project team consisting of McGill Associates – Project management, roadway, utilities; Schnabel Engineering – Dam investigation; Dewberry – Flood modeling; Equinox Environmental – Environmental/recreation; Wolf Creek Engineering – River relocation; LandDesign – Public input; and John Morris – Corps of Engineers/Funding liaison.

He said the Lake Craig Project elements include (1) dam investigation and recommendations; (2) hydraulic and hydrologic modeling; (3) Azalea Road improvements; (4) waterline extension to soccer complex; (5) Swannanoa River relocation; and (6) Corps of Engineers coordination.

Regarding dam investigation (1) key elements (a) structural analysis; (b) geotechnical evaluation; and (c) spillway adequacy; (2) cost estimates; (3) recommendation (a) rehabilitate; and (b) replace; and (4) Corps of Engineers' oversight.

Regarding hydraulic & hydrologic modeling (1) detailed survey (a) topography and (b) cross-section; (2) flood modeling; (3) refine benefit/cost ratio; and (4) Corps of Engineers' oversight.

He then reviewed the roadway improvements and waterline extension. He outlined the advantages to the roadway improvements.

Regarding the Swannanoa River relocation (1) shift river away from Azalea Road embankment; (2) remove sediment from floodplain; (3) restore floodplain bench; and (4) environmental permitting.

Regarding Recreation Park enhancements, they will develop recommendations for future upgrades for greenway linkages; river access; historic landmarks/markers; parking; and outdoor classrooms.

He envisioned the project timeline as follows (1) Notice to proceed – July 2011; (2) Dam investigation/Flood modeling – July-October 2011; (3) Swannanoa River relocation, Azalea Road and waterline design – September-December 2011; (4) Agency review and permitting – January-March 2012; (5) construction bidding – April-May 2012; and (6) construction begins – Summer 2012.

Mayor Bellamy questioned why other City departments (e.g., Public Works Department and the Parks & Recreation Department) are not contributing to this project as the project has more implications than just the waterline. She felt we could do more with the funds permitted by state statute. Ms. Ball responded that when we originally looked at the project, this was the opportunity we had to be able to utilize those to make improvements that probably would have come from other funds, but in this case it is in conjunction with improving the roadway. There is not a waterline now to the Pavilion.

When Mayor Bellamy asked for public comments, none were received.

Due to a conflict of interest, Councilman Russell moved to recuse Councilwoman Manheimer. This motion was seconded by Councilman Smith and carried unanimously.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 11-134. This motion was seconded by Councilman Davis and carried unanimously (Councilwoman Manheimer recused).

**RESOLUTION BOOK NO. 34 – PAGE 68**

**C. MOTION TO PARTNER WITH BUNCOMBE COUNTY TO ISSUE A REQUEST FOR PROPOSALS TO EVALUATE OPTIONS FOR COMMUNITY MEDIA DEVELOPMENT, SMALL BUSINESS AND JOB GROWTH OPPORTUNITIES, AND PUBLIC EDUCATION SERVICES RELATED TO MEDIA TECHNOLOGY**

Director of Administrative Service Lauren Bradley said that this is the consideration of a Request for Proposals to evaluate options for community media development, small business and job growth opportunities, and public education services related to media technology.

In May 2011, public access studio space provided by a third-party organization closed as a result of funding challenges. Due to the status of the organization, the City decided not to renew or extend its recently expired contract for public access management services.

Given this transition, the City Council Finance Committee directed staff to work with Buncombe County to develop a Request for Proposals (RFP) for community media development services, projects or initiatives with an emphasis on the following components:

- **Community development:** Creating a vision of a County and a City that is ahead of other communities in building a media network and resources that are progressive and green, and one that places the power of new media in the hands of local citizens;
- **Economic and workforce development:** Creating a strategy that connects government, education, community, and business in a proactive economic and workforce development movement;

- **Industry development:** Further developing the media arts industry in Asheville and Buncombe County such that it creates new jobs and opportunities for the community; and
- **Training and education:** Training for the 21st Century media world where a small investment can buy you a studio, post production resources and a door to a career.

The expansion of traditional and non-traditional distribution channels as well as community-based initiatives supporting the arts, economic development and education makes this an optimal time to seek proposals for new types of services. As a result, the RFP does not require the provision of a public access channel, although proposals can be submitted for those services. Instead, the scope of the RFP has been broadened to encourage further innovation and community partnerships to ensure the success of media technology development initiatives into the future.

If approved, the RFP would be issued by July 1, 2011, with responses due by August 1, 2011. The Housing & Community Development Committee (H&CD Committee) would receive staff evaluations of proposals at its meeting in August. A final recommendation to award the contract would be brought forward for County Commission and City Council consideration in September 2011.

Production equipment purchased by the former public access management entity is the property of the City of Asheville. Some or all of those assets could be included within the context of the contract award. However, staff will not have a complete and verified inventory of equipment by July 1. As such, the equipment could be added as an addendum to the RFP in the near term or included as a matter of negotiations if the selected proposal would benefit from those assets.

The structure of the funding contemplated in the draft RFP intended to provide seed funding to enable a new community media development initiative to achieve financial independence and sustainability within three years. Proposals will be required to include plans for maintaining the services, program or project once the funding period for implementation has ended. These documents must include an overall business plan and forecasting of future revenues and expenditures.

During the three year award period, funding will be provided according to the following schedule:

- Year 1 (Sept. 2011-Sept. 2012): $60,000
- Year 2 (Sept. 2012-Sept. 2013): $40,000
- Year 3 (Sept. 2013-Sept. 2014): $20,000
- After three years, funding would be discontinued.

Buncombe County and the City of Asheville would split the funding allocation each year, whereby each government would provide $30,000 in year 1, $20,000 in year 2, and $10,000 in year 3.

In the FY 11-12 budget, the City has allocated $30,000 for community media services. These funds were originally budgeted to continue public access management services. If the selected proposal does not incorporate public access, staff recommends that the City use the full allocation of PEG funding for the City's government channel, as allowed by State statute. The City could then use $30,000 of General Fund dollars currently allocated to the government channel for the award of this contract.

The RFP criteria would include policy goals (30%); performance measures (15%); partnerships (10%); public participation (10%); applicability to mission (5%); ability document and evaluate results (5%); and budget, resources and likelihood of success (25%).

Pros:

- Broadens the scope of possible services and initiatives such that capital-intensive studios, production facilities and staffing may longer be a challenge.
- Incorporates an emphasis on economic development, job creation, and workforce training.
- Proposes a funding model that encourages self-sufficiency within three years.

Con:

- With the expansion of the scope, the RFP does not require the provision of a public access channel, although submissions may include one. Once the public access channel is not operational for 120 days, it could be challenging to resume a channel in the future.

Staff recommends City Council approve a motion to partner with Buncombe County to issue a Request for Proposals to evaluate options for community media development, small business and job growth opportunities, and public education services related to media technology.

Vice-Mayor Newman suggested that instead of the H&CD Committee evaluating the proposals, the Finance Committee continue to follow-through as there would be learning curve for the H&CD Committee and the Finance Committee has valuable knowledge of the process. Councilman Russell, Chair of the Finance Committee, said the Finance Committee would be happy to evaluate the proposals prior to them coming to City Council.

Councilman Russell moved to (1) authorize City staff to partner with Buncombe County to issue a Request for Proposals to evaluate options for community media development, small business and job growth opportunities, and public education services related to media technology; (2) issue the RFP by July 1, 2011, with responses due by August 1, 2011; and (3) have the Finance Committee receive staff evaluations of proposals with a final recommendation to award the contract being brought forward for County Commission and City Council consideration in September 2011. This motion was seconded by Councilman Smith.

When Mayor Bellamy asked for further clarification on the RFP as she felt we needed to be clearer on what we are trying to get, Ms. Bradley said that the RFP was drafted to be intentionally broad enough to where there could be innovative, creative proposals brought forward - maybe even approaches we haven't even thought of because we don't work in new media now that could further the economic development and job creation goals, etc. Because that industry in Asheville has grown so much in the last decade we wanted to allow some flexibility to have some of those entrepreneurial ideas to come forward to be measured against Council's high level policy goals. It is intentionally broad because we don't know what the ideal vehicle is to achieve these goals would be but wanted to allow the opportunity for them to come forward outside of just the model of public access management.

In response to Councilman Davis, Ms. Bradley said it's the County's desire that the RFP be written broadly so that it could include a public access channel but that it's not required to include a public access channel. She believed they would reconsider their participation if we draft the RFP otherwise.

Based on previous Council discussion, Mayor Bellamy understood we were going to issue an RFP for a management company to run a public access channel, but the draft RFP does not require the provision of a public access channel.

Ms. Bradley responded to Mayor Bellamy in that there is no proposal in mind that the RFP was written for. There are a lot of opportunities in our community from educational institutions and other organizations that work in media development. If the proposal did not include public access, staff would recommend that the City use the full allocation of PEG funding for the City's government channel.

Councilwoman Manheimer said the Finance Committee discussed the RFP being very broad concept because there might be innovative ideas we hadn't conceived of yet. We didn't want to limit proposals to just being the model of a television channel.

Councilman Russell also noted that the Finance Committee wanted to be open-minded because what the PEG funds were intended to do in 1989 might not be the same in 2011.

In response to Mayor Bellamy regarding our equipment, Ms. Bradley said we are in the process of inventorying and obtaining that equipment from the former location. At this time, we don't have an inventory that could be included as part of the RFP; however, if a proposal for the management of public access or any other proposal that came forward that could use that type of equipment, we could as a part of negotiations of a contract consider some allocation of that equipment if it were a good fit for the proposal that came forward.

Mayor Bellamy questioned if there is a benchmark or scoring checklist associated with how the different options in the RFP are going to be evaluated. Ms. Bradley responded that staff will come up with a scoring sheet that will weight the point system based on the merits of the project. The RFP criteria is outlined in the RFP. Staff looked at best practices of other RFP processes that were run similar to this, like the National Endowment of the Arts and other types of federal agencies. Staff tried to model ours as closely after their process to make sure we had a transparent and fair process given that this is more of a creative proposal competition, than one where you would be bidding on a specific service for building something based on a specification provided.

Councilman Davis said he was very supportive of public access television several years ago with it being a good use of PEG funds. However, during this economy he wasn't sure if the money wouldn't be better spent for other economic development pieces.

Councilwoman Manheimer said we can use the $30,000 for our government channel. One option would be to abandon the project altogether since we don't have a lot of money and use the PEG money on a public access function we are already performing– which is the government channel. Another option is we might want to see the City support something but are not sure what it would be. Personally she is not open to going through this exercise because we don't have $30,000 and we already have the government channel.

Councilman Smith said this is a partnership with the County and they are matching us dollar for dollar on whatever comes forth. As far as economic development, we have an opportunity to partner with the County on something that may end up being very innovative. If nothing comes forward that meets Council's goals in September, we still have the opportunity to vote against it. He is willing to see what proposals come in.

Vice-Mayor Newman agreed with Councilman Smith in that if there are no strong proposals that merit that type of investment, Council can vote it down.

Mr. Steve Holland said in an effort to keep the public access channel alive, he asked Mr. Joe Scott from Intellisound to submit a proposal for an interim professional management of Public Access Television Channel 20 on a six month basis during the time that the City and County develops an RFP, solicits and evaluates responses to it and selects a proposal. The Intellisound proposal was submitted to City and County staff on June 6. Since that time he was made aware that Buncombe County has not certified the Public Access Channel with the North Carolina

Department of Revenue and does not intend to do so by the July 15 deadline. That provides the opportunity for the City to certify the channel and receive the Supplemental PEG funding (estimated at $36,000 annually) that would otherwise be lost and redistributed to other counties and cities in North Carolina. By having a Channel Operator in place by June 30, the channel will meet all the requirements for certification with the North Carolina Department of Revenue. He asked that Council consider approving an interim Management Agreement with Intellisound, Inc. to operate the channel on a six month basis. He provided Council some information, along with a draft management agreement with Intellisound, Inc.

Mr. John Blackwell understood the purpose of this RFP was to have a successful management of the public access channel. He supported Intellisound's interim proposal for management of the public access channel.

Mr. Tim Peck pointed out that one of Council's policy goals in the RFP states "...building a creative economy that is progressive ..." If that means pushing a particular political ideology he objected and urged Council to strike that item as a goal for this initiative.

A gentleman spoke in support of the draft RFP process and was looking forward to writing a proposal that would focus more on tourism and economic development.

Dr. Milton Byrd, URTV producer, said that the access of public television is 100% public participation. The fact that the content of the television shows that are produced are the responsibility of the producers, not the management organization. There is a clear separation for the public to have that freedom of speech through that media. He hoped we can all work together to solve the problem.

Rev. Christopher Chiaronmonte said that Asheville controls the content on the government channel and the public won't have free press in Asheville anymore if there is no public access channel.

The Director of the Asheville Area Arts Council said there are a lot of incredible artists in Asheville that use multi and digital media of all different types and supported issuing the RFP.

Rev. Lisa Landis, URTV producer, said URTV was a model for the nation and urged Council to continue the public access channel so their voices can be heard.

In response to Mayor Bellamy, Councilman Russell clarified that his motion included the policy goals in the staff report.

It was the consensus of Council to have Ms. Bradley change the wording in the RFP from "progressive" to "innovative" or "forward thinking" to remove any inkling of political slanting.

When Mayor Bellamy noted that the percentage criteria of 10% for public participation pretty much gives the indication that there's not going to be a public access channel. Ms. Bradley responded that the intent was not to weight the criteria such that it would negatively impact proposals that came forward with a public access channel. That criteria was put in there to encourage public participation in terms of the creation of the proposal and then the implementation of the initiative. With Council's direction, she can re-vamp the criteria if they feel it does restrict public access television.

Mayor Bellamy would be in support of seeing the percentage for public participation increased in whatever form presented. He hoped this will be a transparent process.

The motion made by Councilman Russell and seconded by Councilman Smith carried on a 5-1 vote, with Councilman Davis voting "no."

**D. RESOLUTION NO. 11-130 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Civic Center Commission. .

The terms of John West, Carol Ann McLendon and James Richards will expire on June 30, 2011.

The following individuals have applied for vacancies: Saul Chase, Christopher James Bradford, Flora Marr, Heather Hunter, Elizabeth Franks and Karl R. Katterjohn.

On June 14, 2011, Vice-Mayor Newman moved to reappoint John West and Carol Ann McLendon to each serve a three-year term respectively, terms to expire June 30, 2014, or until their successors have been appointed; and (2) instruct the City Clerk to arrange interviews for Ms. Flora Marr and Ms. Elizabeth Franks. This motion was seconded by Councilman Russell and carried unanimously.

On June 28, 2011, City Council interviewed Ms. Flora Marr. Ms. Franks was unable to attend the interview.

There was a brief discussion on whether to wait to interview Ms. Franks or continue with the appointment process. Some members of the Civic Center Commission who were present during the interviews expressed encouragement for proceeding with an appointment.

Councilman Smith moved to appoint Ms. Flora Marr as a member of the Civic Center Commission to serve a three year term, term to expire June 30, 2014, or until her successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 64**

**E. RESOLUTION NO. 11-135 - RESOLUTION APPOINTING MEMBERS TO THE PUBLIC ART BOARD**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Public Art Board. .

The terms of Kenn Kotara, Jaan Ferree, Julie Calhoun-Roepnack and Barry Pate will expire on June 30, 2011.

The following individuals have applied for vacancies: William F. Meller, Richard G. Lee, Susanne Hackett, Leslie Shaw, Ami Worthen, Gwynn Rukenbrod, Jessica McCuan, Leslie Klingner and Jennifer Gordon.

It was the consensus of Boards & Commissions Committee on June 14, 2011, to (1) reappoint Ms. Ferree and Ms. Calhoun-Roepnack to each serve a three-year term respectively, terms to expire June 30, 2014, or until their successors have been appointed; (2) appoint Ms. Suzanne Hackett to serve a three-year term, term to expire June 30, 2014, or until her successor has been appointed; and (3) recommend interviewing Ms. Jennifer Gordon and Ms. Leslie Klingner.

After a brief discussion on June 14, 2011, Vice-Mayor Newman moved to (1) reappoint Jaan Ferree and Julia Calhoun-Roepnack to each serve a three-year term respectively, terms to expire June 30, 2014, or until their successors have been appointed; and (2) instruct the City Clerk to arrange interviews for Ms. Susanne Hackett, Ms. Ami Worthen, Ms. Gwynne Rukenbrod,

Ms. Jessica McCuan, Ms. Jennifer Gordon and Ms. Leslie Klingner. This motion was seconded by Councilman Smith and carried unanimously.

On June 28, City Council interviewed Ms. Ami Worthen, Ms. Gwynne Rukenbrod, Ms. Jessica McCuan, Ms. Jennifer Gordon and Ms. Leslie Klingner. Ms. Hackett was unable to attend the interview date and time; however, she expressed interest in serving on the Board.

Vice-Mayor Newman clarified that the Public Art Board was recently expanded from seven members to nine members.

After Council spoke highly of the candidates, Ms. Worthen received 2 votes, Ms. Rukenbrod received 4 votes, Ms. McCuan received 1 vote, Ms. Gordon received 4 votes, and Ms. Klingner received 1 vote. Therefore, Gwynne Rukenbrod and Jennifer Gordon were appointed as members to the Public Art Board to each serve three-year terms respectively, terms to expire June 30, 2014, or until their successors have been appointed.

Mayor Bellamy suggested the Board be expanded to 11 because there is a lot of interest and the caliber of candidates speaks a lot about our community and their commitment to public art. Vice-Mayor Newman said that the Boards & Commissions Committee will review the size of the Board. He asked Councilman Smith, liaison to the Public Art Board, to get their thoughts on membership size as well.

**RESOLUTION BOOK NO. 34 – PAGE 69**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Rev. Lisa Landis recited some of the Constitution regarding free speech. She will fight for her First Amendment.

Dr. Milton Byrd spoke about leadership and management.

Rev. Christopher Chiaronmonte spoke about the need for Asheville to work more to alleviate homelessness.

**Lawsuit**

The City was served with a Complaint from Nationwide Mutual Insurance Company on an unknown date. The Complaint for judgment is in excess of $10,000 – Meter gasket failed causing excessive pressure in the waterline to property of Jean Sponseller at 2 Bent Tree Drive. The Risk Management Division has referred the matter to the City's Third Party Administrator. The Third Party Administrator will assign to counsel outside the office.

**Closed Session**

At 7:31 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(4); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously.

At 7:53 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilman Russell and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:53 p.m.

Magdalen Bullerson
CITY CLERK

MAYOR

Tuesday – July 26, 2011 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor Brownie W. Newman, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; Acting City Manager Cathy Ball; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Terry M. Bellamy

Due to the absence of Mayor Bellamy, Councilman Russell moved for Vice-Mayor Newman to preside over the meeting. This motion was seconded by Councilwoman Manheimer and carried unanimously.

**PLEDGE OF ALLEGIANCE**

Vice-Mayor Newman led City Council in the Pledge of Allegiance.

**INVOCATION**

Vice-Mayor Newman gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING JULY 27, 2011, AS "NATIONAL KOREAN WAR VETERANS ARMISTICE DAY"**

Vice-Mayor Newman proclaimed July 27, 2011, as "National Korean War Veterans Armistice Day" in the City of Asheville.

**B. ANNOUNCEMENT OF STRIVE NOT TO DRIVE WINNERS**

Vice-Mayor Newman recognized Keith Bamberger who explained the Strive Not To Drive Program. He then was pleased to recognize the following award winners: (1) Wendy Hendl has been selected by the Strive Not To Drive Committee to receive the Strive Not To Drive Golden Wheel Award. The Golden Wheel Award recognizes individuals who make a choice be multi-modal by commuting by bus, bike, and shoe. Wendy Hendl has a car and a young child. Even though her car would be the more convenient and easy way to save time, she chooses to be multi-modal – taking the bus, walking, and biking. Ms. Hendl shows how to get things done without using a car, and that is why she is receiving the 2011 Strive Not To Drive Golden Wheel Award; (2) Mr. Anders Joura has been selected by the Strive Not To Drive Committee to receive the Strive Not To Drive Golden Sneaker Award. He has impressed his co-workers with his humble dedication to walking as his chosen mode of transportation. As a student at UNCA, he commutes on foot from the Haw Creek Neighborhood every day – a round trip of ten miles. He also has walked to work every day; (3) Gary Cummings has been selected by the Strive Not To Drive Committee to receive the Strive Not To Drive Golden Spoke Award. The Golden Spoke Award recognizes individuals who make a choice commute by bike. Even though Gary Cummings has been committed to riding a bike to and from work for decades, it was not until 2008 he choose to rid himself of a car. He now makes every trip out of the house into an adventure. The most important equipment he rides with is for safety. Both his bike and his riding attire are equipped with high visibility reflectors and lights, and he diligently follows all the rules of the road; and (4) David Tindall has been selected by the Strive Not To Drive Committee to receive the Strive Not To Drive Leadership Award. The Leadership Award recognizes individuals who make it possible for others to commute without being alone in a car. The Mellow Mushroom provides lockers for employees who Strive Not To Drive. The lockers give the employees with

peace of mind about their commuting gear while working. Mr. Tindall provides inspiration and guidance for those who want to live car free, by sharing his knowledge about how to commute, his hints about where to get gear and equipment for those on a budget, advice on how to be prepared to commute in all types of weather, and most importantly encouragement and support for those who choose to Strive Not To Drive.

He then announced the winners of the Strive Not To Drive Workplace Challenge Winners: 2-10 employees - Western North Carolina Alliance; 11-30 employees - Liberty Bikes; 31-50 employees – REI; and 50+ employees - Evergreen Community Charter School. Buncombe County was the winner of the Passport Program.

**II. CONSENT AGENDA:**

At the request of Councilman Davis, Consent Agenda Items "C" and "H" were removed from the Consent Agenda for discussion and/or individual votes.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 28 2011**

**B. RESOLUTION NO. 11-136 - RESOLUTION RATIFYING THE SALE AND DISPOSAL OF SURPLUS WATER METERS TO BILTMORE IRON AND METAL COMPANY**

Summary: The consideration of a resolution ratifying the sale and disposal of surplus water meters to Biltmore Iron and Metal Company (herein "Biltmore Iron").

Water Maintenance identified water meters removed from service as obsolete and has requested the disposal of these meters. Per N.C.G.S. 160A-266, Sale and Disposal of Property, and Resolution 07-118, the City's Purchasing office has authority to dispose of personal property valued at less than $30,000 by private negotiation and sale. The value for this lot of meters was estimated at less than $30,000; bids were solicited and received from several potential purchasers, in accordance with Resolution No. 07-118. Due to higher market pricing, the high bid came in at $32,000, and the meters were sold to the high bidder, Biltmore Iron. It is not clear whether Purchasing has the authority to dispose of personal property under these circumstances (estimate below $30,000 threshold; bid above) without Council action, so ratification of this action by Council is requested.

Pros:

- Promotes City of Asheville fiscal responsibility by disposing of surplus property which generates revenue
- Space utilization eliminates the need to store large, bulky, unused equipment
- Competitive process yielded market price, as statute contemplates
-

Con:

- None

The fiscal impact is $32,000 in revenue in the Water Resources Fund.

City staff recommends City Council adopt a resolution approving the sale and disposal of surplus water meters to Biltmore Iron, and ratifying previous staff action to award the contract as described.

**C. RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC., d/b/a AT&T NORTH CAROLINA FOR PART OF THE SURFACE PARKING LOT LOCATED AT 25 O.HENRY AVENUE**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**D. RESOLUTION NO. 11-138 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES FROM JULY 1, 2011 – JUNE 30, 2012**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Asheville Humane Society for animal shelter services within territorial limits of the City of Asheville.

Buncombe County has required the City of Asheville pay for animal shelter services through the Asheville Humane Society who has contracted with the County to run the animal shelter. The cost for the shelter to the City for FY 2011-2012 will be $11,116.88 per month for animal shelter services by AHS for a FY year total of $133,402.56. This not an increase from the cost of last years' service. This cost is included in the Asheville Police Department's budget. The City and the Humane Society need to enter into this agreement for the shelter services for the term of July 1, 2011 through June 30, 2012.

The City of Asheville continuing its animal shelter contract through the Asheville Humane Society ties directly back through the City Council's Strategic Operating Plan, specifically the focus area of safe by actively enforcing animal control laws.

Pro:

- The City will not have to pay for construction and operation of its own animal shelter to take care of its animal sheltering needs and the Humane Society will be responsible for the care of all animals brought to the shelter.

Con:

- The City has to pay out of its general fund for shelter services where Buncombe County provides the same services to all other non-incorporated county residents at no additional costs except through county taxes.

The 2011-2012 contract amount remains the same as the 2010-2011 contract of $133,402.56. Funding for the contract is budgeted in the Police Department's FY 2011-12 budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Asheville Humane Society for Animal Shelter Services for the term of July 1, 2011, through June 30, 2012.

**RESOLUTION BOOK NO. 34 – PAGE 72**

**E. RESOLUTION NO. 11-139 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE RENEWAL AGREEMENT WITH ONTARIO INVESTMENTS, INC. FOR GOLD CARTS AND MAINTENANCE EQUIPMENT AT THE ASHEVILLE MUNICIPAL GOLF COURSE**

Summary: The consideration of a resolution authorizing the City Manager to enter into a lease renewal agreement with Ontario Investments, Inc. for golf carts and maintenance equipment at the Asheville Municipal Golf Course.

In 2009, the City of Asheville entered into a one-year lease agreement with an option to renew for one additional year with Ontario Investments at a cost of $123,158 for golf carts and maintenance equipment at the Asheville Municipal Golf Course. In 2010, the City entered in a one-year renewal of the lease at a cost of $92,369. The City wishes to renew the lease an additional ten months at a cost of $57,150 while the option to outsource golf course operations is explored.

This action complies with the City's Strategic Operating Plan in that it supports enhancing the city's commitment to infrastructure maintenance and public facilities. It is also consistent with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it provides ongoing maintenance and care for the City's park system.

Pros:

- Investment to maintain and care for the Asheville Municipal Golf Course, a City-owned asset.
- Provide quality service for ongoing, core facility maintenance services.
- Fulfill commitment for maintenance of the golf course.

Cons:

- None

The 2011 ten-month lease renewal will cost $57,150. The funds to support the lease renewal is budgeted in the FY 2011-2012 operating budget in the Parks, Recreation and Cultural Arts Department in the Golf Course Fund for the leased golf carts and maintenance equipment.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a lease renewal agreement with Ontario Investments Inc. for golf course carts and maintenance equipment at the Asheville Municipal Golf Course not to exceed $57,150.

**RESOLUTION BOOK NO. 34 – PAGE 73**

**F. RESOLUTION NO. 11-140 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH IRWIN TELESCOPIC SEATING COMPANY FOR THE INSTALLATION OF NEW SEATING RISERS IN THE ASHEVILLE CIVIC CENTER ARENA**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Irwin Telescopic Seating Co., located in Altamont, Illinois, in the amount of $ 775,746 for the installation of new seating risers in the Asheville Civic Center arena.

The replacement and reconfiguration of the arena lower bowl seating is one of the most integral elements of the Civic Center renovation plans. The new risers will allow for placement of new seats and allow patrons to have an improved view of the arena floor during concerts and sporting events. The design of the risers on the West side of the Arena will allow additional points of access/egress to and from the arena floor from the concourse area.

The Seating Risers are part of the overall renovations in preparation to host the Southern Conference Basketball Tournament beginning in March 2012 and through 2015.

This action complies with the City Council Strategic Operating Plan's Fiscal Responsibility goal of developing strategic partnerships to leverage resources for infrastructure and Capital Improvement Plan projects. This action also complies with the Civic Center

Commission Master Plan that encourages continuing renovations for the facility, and supports the goal of developing new partnerships.

This action has been reviewed and recommended by the Civic Center Commission.

Pros:

- Project allows new seating configuration and improved sight lines for patrons.
- Risers will be less maintenance intensive.
- Project bid is below budget.

Cons:

- None noted.

Funding for this contract is included in the Civic Center Capital Fund as part of the budget for the Southern Conference renovations.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Irwin Telescopic Seating Co. for $ 775,746 for the installation of new seating risers in the Asheville Civic Center arena.

**RESOLUTION BOOK NO. 34 – PAGE 74**

**G. MOTION APPROVING THE BOARD OF ALCOHOLIC BEVERAGE CONTROL'S TRAVEL POLICIES ADOPTED JUNE 28, 2011**

Summary: Recent changes in Commission rules require ABC Boards across the state to adopt a travel policy that mirrors the travel policy of their appointing authority effective this year. The rule change mandates that the appointing authority "approve" the ABC Board's travel policy and then the appointing authority must send a copy of that approval to them within 30 days of the approval action.

The Asheville Board of Alcoholic Beverage Control adopted and approved policies modeled after the City's policies at their meeting on June 28, 2011. The Asheville Board of Alcoholic Beverage Control respectfully requests City Council formally approve the policies for the Asheville ABC Board and their employees.

**H. RESOLUTION AUTHORIZING A PUBLIC HEARING TO BE HELD ON AUGUST 9, 2011, TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR LINAMAR CORPORATION VIA INTER-LOCAL GOVERNMENT AGREEMENT WITH BUNCOMBE COUNTY**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**I. ORDINANCE NO. 3991 - ORDINANCE ENACTING OR CHANGING SPEED LIMITS TO 25 MPH ON PROVIDENCE ROAD, WILSHIRE DRIVE, WILBURN ROAD, WILBURN PLACE, CARLTON PLACE, AND LUTHER STREET IN THE WILSHIRE PARK NEIGHBORHOOD IN WEST ASHEVILLE**

Summary: The consideration of an ordinance to enact and/or change a speed limit on Providence Road, Wilshire Drive, Wilburn Road, Wilburn Place, Carlton Place, and Luther Street in the Wilshire Park neighborhood in West Asheville.

According to state law (NCGS # 20-141), the statutory speed limit in North Carolina is 35 mph inside municipal corporate limits for all vehicles and 55 mph outside municipal corporate limits for all vehicles except for school buses and school activity buses.

Furthermore, local authorities may authorize by ordinance higher speeds or lower speeds than the statutory 35 mph speed limit on locally-maintained streets provided that the higher speed limit cannot exceed 55 mph. Speed limits authorized by local authorities are effective when the appropriate signs are erected.

City staff recently completed an engineering and traffic investigation and determined that a 25 mph speed limit would be reasonable and safe on Providence Road from Johnston Boulevard to Wilburn Place. In addition, since the Wilshire Park neighborhood is also served by Wilshire Drive, Wilburn Road, Wilburn Place, Carlton Place, and Luther Street and the entire neighborhood only has three access points, it is reasonable to place a 25 mph speed limit within the entire neighborhood. The subject streets primarily serve residential properties in a well established neighborhood as well as Emmanuel Lutheran School, a private Christian school serving infants through the eighth grade. Daily traffic volumes are less than 500 vehicles per day and the 85$^{th}$ percentile speed ranges from 23.3 mph to 29.6 mph.

This action complies with the City Council Strategic Operating Plan in the Safety focus area by improving the "street experience" for all users including pedestrians, bicycles, and motorists in a primarily residential corridor.

Pros:

- City staff has been able to respond favorably to a neighborhood request.
- Based on the 85$^{th}$ percentile speed, most drivers would adhere to a 25 mph posted speed limit.

Cons:

- The initial cost to install the appropriate speed limit signs is about $1,500.
- Typically, speed limit signs have a serviceable life of five to seven years.

The initial cost to install the appropriate speed limit signs is about $1,500 and is included in the current operating budget for the Transportation Department.

City staff recommends that City Council approve an ordinance enacting and/or changing a 25 mph speed limit on Providence Road, Wilshire Drive, Wilburn Road, Wilburn Place, Carlton Place, and Luther Street in the Wilshire Park neighborhood in West Asheville.

**ORDINANCE BOOK NO. 27 – PAGE 91**

**J. RESOLUTION NO. 11-142 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CAROLINA MANAGEMENT TEAM FOR THE WATER RESOURCES WATER STORAGE TANK AND PIPE COATING AND MAINTENANCE PROJECT**

**ORDINANCE NO. 3992 - BUDGET AMENDMENT FOR THE WATER RESOURCES WATER STORAGE TANK AND PIPE COATING AND MAINTENANCE PROJECT**

Summary: The consideration of a resolution by City Council authorizing the City Manager to enter into an agreement with Carolina Management Team in an amount not to exceed $400,000 for the Water Resources Water Storage Tank and Pipe Coating and Maintenance Project; and a budget amendment in the amount of $200,000 from existing capital improvement funds.

On May 11, 2011, the Water Resources Department issued a Request for Proposals (RFP) for the Water Storage Tank and Pipe Coating and Maintenance Project. The scope of the project is for the maintenance, rehabilitation, repair, and repainting of water storage tanks and

pump station piping at various sites in the water distribution system. The project locations include: Spivey Mountain Tank and Pump Station Piping, West Asheville / Candler Knob Tanks 1 and 2, Beaverdam Tank & Pump Station Piping, South Buncombe Tank, and Ridgeview Tank.

On June 8, 2011, Water Resources received three (3) proposals for the project in response to the RFP. Companies responding were:

1. Carolina Management Team – Enka, NC; $389,857.50 total bid
2. Southern Corrosion Incorporated – Roanoke Rapids, NC; $441,347.75 total bid
3. Superior Industrial Maintenance – Concord, NC; $552,470.00 total bid

The total bid includes: the base work to rehabilitate, repair, and repaint the aforementioned project locations; the cost to add three (3) additional sites; and crack / spall repair. A review team comprised of Water Resources staff reviewed each proposal and rated them based on seven categories (i.e. qualifications, understanding of project scope, cost, and project schedule).

The total scores for each company are:

1. Carolina Management Team – 478.0
2. Southern Corrosion Incorporated – 419.5
3. Superior Industrial Maintenance – 348.5

Carolina Management Team (CMT) has been selected for the project based on receiving the highest rating from the review team. It is CMT's qualifications and cost that earns them the highest rating. In order to stay within the $400,000.00 budget, the three additional sites quoted in the proposal will not be included in the project scope.

This project is part of City Council's strategic plan to maintain and improve city infrastructure and provide local companies with labor opportunities.

Pros:

- Approval of the project will allow Water Resources to complete necessary maintenance on various water storage tanks and pump station piping in need of rehabilitation and repair. The project will also make these sites more aesthetically pleasing.
- The project will provide a local company with work for at least the next year.

Con:

- If the project is not approved, the water storage tanks and pump station piping on the list to be rehabilitated and repaired with continue to degrade, which may eventually jeopardize the system's water quality.

Water Resources has a Water Storage Tank Maintenance capital project in which $200,000 is currently budgeted for this project. The contract with Carolina Management Team will be for a not to exceed amount of $400,000. A budget amendment in the amount of $200,000 is needed to increase the project budget in order to cover the additional funds needed. The additional funds needed for the project will be reallocated from the Hendersonville Road Capital Improvement Project, which was completed under budget.

| | |
|---|---|
| Current Tank Maintenance Budget | $200,000.00 |
| Carolina Management Team Bid (excludes add'l sites) | $346,957.50 |
| Contingency (~15%) | $ 53,042.50 |
| Revised Project Budget (Not to Exceed) | $400,000.00 |

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with Carolina Management Team in an amount not to exceed $400,000

for the Water Resources Water Storage Tank and Pipe Coating and Maintenance Project; and a budget amendment in the amount of $200,000 from existing capital improvement funds.

**RESOLUTION BOOK NO. 34 – PAGE 76**
**ORDINANCE BOOK NO. 27 – PAGE 92**

**K. RESOLUTION NO. 11-143 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH PRAXAIR, INC. FOR THE PURCHASE OF LIQUID OXYGEN AND THE CONTINUED LEASE OF TWO STORAGE TANKS FOR THE MILLS RIVER WATER TREATMENT PLANT**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Praxair, Inc. for the purchase of liquid oxygen and the continued lease of two storage tanks for the Mills River Water Treatment Plant.

There are a limited number of vendors who supply liquid oxygen. Since the Mills River Water Treatment Plant went online in 1999, Water Resources has used Praxair, Inc. to supply liquid oxygen to generate ozone for destruction of organics and the disinfection process. Due to legal and insurance requirements and restrictions on the use, storage, and transport of liquid oxygen, Praxair also leases two storage tanks to Water Resources that are specifically designed to safely contain the liquid oxygen. It would be costly, cumbersome, and potentially hazardous to remove Praxair's existing tanks and change to another vendor, who would have to install their company's own storage tanks. Mills River may need to be offline in order to switch over to another vendor's tanks since the generation of ozone can not be completed without the liquid oxygen.

Water Resources is recommending that the purchase of liquid oxygen and lease of the storage tanks continue through Praxair since standardization or compatibility is the overriding consideration per G.S. 143-129 (e) (6). In addition, Praxair has agreed to lower the cost of liquid oxygen and the lease of the tanks for the next two fiscal years. At the current rate, it will cost Water Resources a total of $75,057.18 for the first year and $80,311.18 for the second year. Praxair is proposing a 15.74% reduction in the total cost for the next two years, which equates to a savings of $24,446.65 should Water Resources continue with Praxair as the supplier. Water Resources is considering an 8-year agreement with Praxair with the option to renew on an annual basis after the initial agreement. Department staff will continue to work with the Purchasing Division to use a pricing index to ensure Praxair maintains competitive pricing.

This project is part of City Council's strategic plan to maintain city infrastructure and to operate the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- Liquid oxygen is needed for the ozone generation process at the Mills River Water Treatment Plant. Praxair has the apparatus, equipment, and storage tanks already in place.
- The City will save $24,446.65 in a 2-year period by the continuation of Praxair as the supplier.

Con:

- If Water Resources changes vendors, the current storage tanks would have to be removed and replacement tanks installed by the new vendor. That would be costly, difficult, and possibly hazardous due to the volatile nature of liquid oxygen.

Liquid oxygen is budgeted in Water Resource's annual operating budget. Entering into an agreement with Praxair, Inc., for the liquid oxygen and lease of the storage tanks will save Water Resources $24,446.65 in a 2-year period.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with Praxair, Inc. for the purchase of liquid oxygen and lease of storage tanks for the Mills River Water Treatment Plant.

**RESOLUTION BOOK NO. 34 – PAGE 78**

**L. RESOLUTION NO. 11-144 - RESOLUTION DECLARING THE INTENT OF THE CITY TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION AND IMPROVEMENT OF VARIOUS CAPITAL PROJECTS AND THE ACQUISITION OF VEHICLES AND EQUIPMENT FROM THE PROCEEDS OF AN INSTALLMENT FINANCING CONTRACT TO BE EXECUTED AND DELIVERED IN FISCAL YEAR 2012**

Summary: The consideration of a Resolution declaring the intent of the City to reimburse itself for capital expenditures incurred in connection with the acquisition, construction and improvement of various capital projects and the acquisition of vehicles and equipment from the proceeds of an Installment Financing Contract to be executed and delivered in Fiscal Year (FY) 2012.

Several debt issuances are currently being planned for FY 2012: (1) the issuance of "new money" for Council approved capital projects authorized as part of the FY 2012 and FY 2011 Budgets, (2) the takeout of the interim note on the 51 Biltmore Parking Deck project and (3) the refinancing of some existing debt to achieve financial savings. Each category is further described below.

**(1) FY 2011 and FY 2012 Capital Projects**
City Council adopted the FY2012 Budget in June 2011. The FY2012 Budget contains several capital projects, vehicles and equipment that are to be funded from the proceeds of the issuance of tax-exempt debt. The FY2011 Budget contains two projects (Sardis and Airport Roads sewer) and a fire aerial ladder apparatus that will also be funded from the proceeds of debt issuance. These capital projects, vehicles and equipment total approximately $17.8 million for the two fiscal years with $15.3 million relating to the FY2012 Budget and $2.5 million relating to the FY2011 Budget.

**(2) Permanent Financing for 51 Biltmore Parking Deck**
Several months ago, City Council authorized the issuance of an interim credit facility (a short term borrowing somewhat similar to a temporary construction loan) for the 51 Biltmore Parking Deck project. As this project continues to progress through the coming months, City staff anticipates securing the permanent financing for this project in the January – March 2012 timeframe.

**(3) Refinancing of existing debt**
A portion of the City's outstanding debt (1997 COPs and 2006 installment financing contract) presently bears interest at the rates of 3.92% and 5.10%. The collateral for these projects are, in part, the Municipal Buildings and two fire stations. A refunding of this debt, at current market rates, could potentially produce about $1 million in cash flow savings through 2021.

There are significant advantages in 'pooling' these three, disparate project financings into a single transaction and include minimizing separate issuance cost transaction fees (banks, bond counsel, corporation counsel), consolidating financing calendars and review by the Local Government Commission and improving the efficiency of the collateral pledge.

Because of later timing of the 51 Biltmore project takeout, a consolidated, single financing will not occur until the January – March 2012 time period. In the interim, City staff anticipates proceeding with the design, construction and purchase of some or all of the 2012 and 2011

capital projects, vehicles and equipment. The purpose of the Reimbursement Resolution is to provide the City with the ability to move forward with the projects and reimburse its accounts upon the issuance of the debt.

The Resolution does not specifically authorize the issuance of the debt. Those resolutions will be drafted in connection with the debt issuance in early 2012. Additionally, as a number of the projects, vehicles and equipment are bid, the actual size of the new money financing can be further refined.

Pro:

- Enables the City to begin spending money on the Council's approved capital projects, vehicles and equipment that were to be financed from debt proceeds.
- Proceeding with the construction projects now, in a 'soft market' may result more aggressive bidding and lower costs.

Con:

- Lost opportunity to earn interest (although at very low interest rates in the range of 1/10 of 1% to 1/4 of 1%) on the City's unrestricted cash and investments which are temporarily diverted to pay for the capital projects pending reimbursement from the debt issuance.

The Reimbursement Resolution will result in some minimal loss of interest income. Bidding and proceeding with the authorized capital projects may result in better pricing thus lower the actual amount of the debt financing. The repayment of the "new money" debt issuance is incorporated in the debt management plan through the capacity being generated by the retirement of existing debt.

Staff recommends City Council adopt the resolution declaring the intent of the City to reimburse itself for capital expenditures incurred in connection with the acquisition, construction and improvement of various capital projects and the acquisition of vehicles and equipment from the proceeds of an Installment Financing Contract to be executed and delivered in FY 2012.

**RESOLUTION BOOK NO. 34 – PAGE 79**

**M. RESOLUTION NO. 11-145 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SERVICES CONTRACT WITH BUNCOMBE COUNTY FOR THE PROVISION OF PARATRANSIT SERVICES**

Summary: The consideration of a resolution authorizing the City Manager to enter into a services contract with Buncombe County for the provision of paratransit services.

The American with Disabilities Act of 1990 (ADA) and Federal Transit Administration (FTA) require fixed route transit systems such as the Asheville Transit System to provide paratransit services. Paratransit services are special public transportation options for senior citizens and persons with disabilities. Buncombe County Mountain Mobility has provided these services to Asheville Transit System since the 1990's when the American with Disabilities Act was created.

Buncombe County Mountain Mobility also provides service at the county level, mainly towards the rural areas. Mountain Mobility works cooperatively with Asheville Transit to provide fixed route service in Black Mountain and Candler extending transit accessibility into the county. They also provide public transportation for a large number of non-profit and governmental agencies such as the Council on Aging, Industries for the Blind, and the Buncombe County Health Department.

Mountain Mobility has recently contracted administrative and planning services with Land of Sky Regional Council and operation of transportation services with McDonald Transit

Associates. In order to help cover the costs of fuel and other expenses, the Buncombe County Board of Commissioners approved a contract rate increase for Mountain Mobility services from $1.25 to $1.30 per service mile plus 10% of the gross cost for administration, effective July 1, 2011. The contract rate does not cover the fully allocated costs of providing services; costs are significantly subsidized by county, grant, and other local funding sources. Fares for general public transportation services will not increase at this time. Each party may cancel the contract with 30 days advance notice.

This action complies with the City Council Strategic Operating Plan by supporting the affordable and fiscal responsibility focus areas, specifically by offering a standard of living that is affordable and attainable for people of all incomes, life stages and abilities and making smart investments that produce tangible results.

Pros:

- Enables the City to provide required paratransit service without a large capital investment.
- Provides a comparable standard of transportation services for all persons.
- Furthers intergovernmental cooperation in achieving a common goal of increasing mobility for all persons.
- Complies with the Americans with Disabilities Act of 1990.

Con:

- The City is responsible for the local match of $150,000.

The total cost of the subject project to the City of Asheville for FY 2011-12 is about $350,000. The City will be reimbursed about $200,000 of the project cost from the Federal Transit Administration which equates to 10% of the annual Federal allocation under Section 5307. The remaining balance of $150,000 represents the local match and is provided by the City. These funds are budgeted in the current fiscal year in the Transit Services Fund.

City staff recommends that City Council approve a resolution authorizing the City Manager to enter into a services contract with Buncombe County for the provision of paratransit services.

**RESOLUTION BOOK NO. 34 – PAGE 81**

**N. RESOLUTION NO. 11-146 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT AN EASEMENT FROM HOLY TRINITY GREEK ORTHODOX CHURCH THROUGH 227 CUMBERLAND AVENUE FOR THE PURPOSE OF CONSTRUCTING STORM DRAINAGE AS PART OF REED CREEK GREENWAY, PHASE II**

Summary: The consideration of a resolution to accept an easement from Holy Trinity Greek Orthodox Church through 227 Cumberland Avenue (PIN # 9649141078) for the purpose of constructing storm drainage as part of Reed Creek Greenway, Phase II.

In 2002 City Council authorized the acceptance of a donation of 0.49 acres of land from Holy Trinity Greek Orthodox Church for use as a portion of the Reed Creek Greenway. As part of the donation agreement, the City agreed to correct erosion issues on church property adjacent to the greenway caused by storm water discharge from a City storm drain, which also impacts the Reed Creek Greenway. The agreement authorizes the City to remedy the erosion problems using whatever engineering means necessary. Staff determined a storm water pipe is needed which will be installed as part of Reed Creek Greenway, Phase II construction. Per the storm water policy, a permanent drainage easement is required where the new pipe will be installed for maintenance purposes.

The Holy Trinity Greek Orthodox Church has agreed to donate a .051-acre easement to the City for the purpose of storm water drainage. The permanent easement will allow the City to meet its obligations to the church as stated in the donation agreement dated September 11th, 2002; and will benefit the infrastructure of the Reed Creek Greenway. The storm water issues will be corrected immediately and construction on Reed Creek Greenway Phase II has already begun with completion expected by the end of November 2011.

This action complies with the City of Asheville Strategic Plan 2011-2012 Multimodal Transportation goal in that it will promote multimodal transportation by investing in greenway infrastructure and leveraging a private partnership. This action also complies with the Parks, Recreation, Cultural Arts, and Greenways Master Plan in that it will enable the development of a new greenway.

Pros:

- Acquisition of the easement will allow the city to meet its obligations to the Holy Trinity Greek Orthodox Church as stated in the donation agreement dated September 11th, 2002.
- The subsequent storm water drainage will benefit the Reed Creek Greenway infrastructure.

Con: None

No fiscal impact since the easement will be donated to the City at no cost.

City staff recommends City Council adopt a resolution authorizing the Mayor to accept an easement from Holy Trinity Greek Orthodox Church at 227 Cumberland Avenue for the purposes of constructing storm water drainage in association with the Reed Creek Greenway, Phase II.

**RESOLUTION BOOK NO. 34 – PAGE 82**

**O. RESOLUTION NO. 11-147 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2011 BELE CHERE FESTIVAL**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2011 Bele Chere Festival.

The following organizations: Asheville Ski Club, Benevolent Patriotic Order of the Does, Phi Beta Lambda –AB Tech, Cataloochee Ski Patrol, Wild South, St. Johns Episcopal Church, Asheville Area Paralegal Association, Green Opportunities, Asheville Biltmore Rotary Club, and The Mediation Center have requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at 2011 Bele Chere Festival and allow for consumption at this event.

The 2011 Bele Chere Festival area will be open on Friday, July 29, 2011 from 12:00 p.m. to 10:00 p.m.; Saturday, July 30, 2011 from 10:00 a.m. to 10:00 p.m.; and Sunday, July 31, 2011 from 12:00 p.m. to 6:00 p.m.

The sale of malt beverages and/or unfortified wine will end at 9:45 p.m. in all instances; however, the possession of open containers of malt beverages and/or unfortified wine or consumption of malt beverages and/or unfortified wine will only be allowed during the periods as follows:

Friday, July 29, 2011, from 12:00 p.m. to 10:00 p.m.
Saturday, July 30, 2011, from 10:00 a.m. to 10:00 p.m.

There will be no sales and/or consumption of malt beverages and/or unfortified wine permitted on Sunday July 31, 2011.

Pros:

- Allows for fundraising opportunities

Cons:

- Potential for public safety issues

The fiscal impact would be staffing of City of Asheville police officers as required.

City staff recommends City Council adopt a resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2011 Bele Chere Festival.

**RESOLUTION BOOK NO. 34 – PAGE 83**

**P. RESOLUTION NO. 11-148 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO PURCHASE OUTDOOR RECYCLING RECEPTACLES**

**ORDINANCE NO. 3993 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO PURCHASE OUTDOOR RECYCLING RECEPTACLES**

Summary: The consideration of (1) a resolution authorizing the City Manager to accept a grant from the N.C. Dept. of Environmental and Natural Resources (DENR) to purchase outdoor recycling receptacles made from recycled materials to be installed in city parks and (2) a budget amendment, in the amount of $30,000, accepting the funds.

The City of Asheville has been awarded a second Community Waste Reduction and Recycling Grant from DENR to install permanent recycling receptacles at city parks to support community solid waste reduction efforts. In 2010, temporary recycling receptacles were installed in all city parks and collection services were contracted with Waste Pro through the Parks, Recreation and Cultural Arts. These grant funds will pay for the purchase of permanent recycling receptacles. The receptacles will be installed by staff and collected under the existing contract between PRCA and Waste Prot. Through this grant the recycling infrastructure in parks will be upgraded from temporary plastic bins to durable, long term receptacles made from recycled materials. Staff anticipates this long term investment made possible through this grant will divert 35% of the waste collected in city parks from the landfill.

This action complies with City Council's Strategic Operating Plan in that it implements ways to reduce city-wide solid waste

Pro:

- Reduce landfill waste by 35% or 5,500 tons through recycling

Con:

- Requires $6,000 in matching funds from the City

The $6,000 in matching funds are already budgeted in the approved FY 2011-12 General Operating Budget of the Parks, Recreation and Cultural Arts Department.

City staff recommends City Council (1) adopt a resolution authorizing the City Manager to enter an agreement with the North Carolina Department of Environment and Natural Resources

to purchase recycling receptacles; and (2) adopt the budget amendment in the amount of $30,000.

**RESOLUTION BOOK NO. 34 – PAGE 88**
**ORDINANCE BOOK NO. 27 – PAGE 94**

**Q. ORDINANCE NO. 3994 - BUDGET AMENDMENT TO PURCHASE A STREET MILLING MACHINE**

Summary: The consideration of a budget amendment in the General Capital Projects Fund, in the amount of $120,000, from debt service proceeds to purchase a street milling machine.

As part of its annual street maintenance program, Public Works has typically contracted out milling services. The milling services contract is a significant part of the overall cost of the street resurfacing program. Based on the current Capital Improvement Program, Public Works staff estimates that it would spend approximately $1.6 million over the next five years for milling contracts. Rather than spend this amount on contracting, Public Works and Finance staff have determined that it would be more cost effective to purchase the milling equipment and hire an operator. Based on our analysis, purchasing the equipment and hiring an operator would save around $900,000 over the next five years when compared to contracting out for the services.

In order to be able to purchase the milling equipment, which will cost $320,000, in the current fiscal year, staff is requesting that Council amend the adopted General Capital Projects Fund budget by $120,000. This $120,000 amendment represents the difference between the amount that was going to be contracted for milling in that fund ($200,000) and the purchase price ($320,000) of the milling equipment. The purchase of the milling equipment will be funded with debt proceeds with a likely repayment schedule of five years.

This action complies with the City Council Strategic Operating Plan by allowing consistent levels of service at a more efficient cost, implements a more fiscally responsible program, and creates an additional job within the City.

The program also has the potential to create more collaborative and effective working partnerships between the City of Asheville and other key organizations, particularly other municipalities and utilities, as this service is proportionately even more expensive for smaller entities to offer. Specifically, the program can be sublet to other municipalities and utilities for a minimal fee, which can even further maximize the return on this investment.

Pros:

- Savings of $900,000 over the next five years
- Creates an additional job
- Provide significant operational flexibility advantages regarding scheduling and applications of the service
- Can be used to support smaller allied entities

Cons:

- Realized savings would come at the expense of formerly contracted services
- Procuring equipment would require acquiring additional debt

As noted above, the expected savings over the next five years is approximately $900,000. The budget amendment is needed in the current fiscal year because the purchase price of the milling equipment will exceed the amount budgeted in the General Capital Project Fund for the milling contract. The purchase will be funded with debt proceeds, with an estimated annual debt service of $73,000 over five years.

City staff recommends City Council adopt a budget amendment in the General Capital Projects Fund, in the amount of $120,000, from debt service proceeds to purchase a street milling machine.

Councilman Smith was pleased to note the expected savings of $900,000 over the next five years.

**ORDINANCE BOOK NO. 27 – PAGE 96**

Vice-Mayor Newman asked for public comments on any item on the Consent Agenda, but received none.

Vice-Mayor Newman said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Russell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

**ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

**C. RESOLUTION NO. 11-137 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC., d/b/a AT&T NORTH CAROLINA FOR PART OF THE SURFACE PARKING LOT LOCATED AT 25 O.HENRY AVENUE**

Summary: The consideration of a resolution authorizing the Mayor to execute a lease agreement between Bellsouth Telecommunications, Inc., d/b/a AT&T North Carolina and the City of Asheville for part of the surface parking lot located at 24 O.Henry Avenue.

The 2008 City of Asheville Comprehensive Parking Plan identified a deficit of available public parking during a typical weekday in downtown Asheville. In order to supply additional parking in Zone B, one of the deficit zones, the City has offered to enter into a lease with AT&T North Carolina for part of the surface parking lot located at the corner of O.Henry Avenue and Haywood Street (identified as PIN # 9649-20-5843-00000). The proposed lease area would provide 47 public parking spaces in proximity to the Asheville Civic Center, Grove Arcade, and 2the Haywood Street retail and business corridor.

The proposed term for the subject lease is five years, at an annual rental rate of $31,020 ($55 per parking space per month times 47 parking spaces times 12 months). City staff has performed analysis of monthly parking rates in downtown and found this price point to be consistent with those numbers. The City will also be responsible for paying for improvements to the parking lot to modify it for public parking including a pay-by-space machine, at an anticipated cost of $57,000. Assuming the up-front costs are annualized over the 5-year lease term and anticipating a conservative revenue stream, City staff believes that revenues will exceed expenses by $41,000 per year.

Given the responsibilities of a public utility, AT&T North Carolina has requested to reserve the right to use 20 of the 47 spaces in the event of an emergency, with rent to be abated if the use by AT&T exceeds 7 days.

This action complies with the City Council Strategic Operating Plan by supporting the Council goals: (1.) Establish relationships with outside partners in order to leverage community assets for public benefit; in this instance, partnering with AT&T North Carolina allows for the supply of much needed parking in a high demand area of downtown and (2.) Fiscal responsibility - incorporating public parking into existing private surface lots is an effective and efficient use of Parking Fund dollars. This action also complies with the 2008 City of Asheville Comprehensive

Parking Study by supplying an additional 47 spaces in one of the deficit zones in downtown Asheville.

Pros:

- Optimum location for downtown public parking
- Secured area with fencing
- Utilizing existing private un-used surface parking for public benefit
- Annual revenues should exceed annual expenses by $41,000

Con:

- Up-front costs of $57,000 and annual lease payment of $31,020.

The subject lease agreement includes up-front costs of about $57,000 and an annual lease payment of $31,020. The up-front costs can initially be absorbed in the current operating budget of the Parking Enterprises Fund and city staff anticipates that the annual revenues would exceed annual expenses including the annualized up-front costs by $41,000 per year.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute the lease agreement with Bellsouth Telecommunications, Inc., d/b/a AT&T North Carolina on behalf of the City of Asheville.

Councilman Davis was pleased to recognize this important step for parking in the downtown area.

Director of Transportation Ken Putnam said that in approximately 90 days, we will have about 40-45 parking spaces available in what will be a pay by space lot.

Councilman Davis moved for the adoption of Resolution No. 11-137. This motion was seconded by Councilman Russell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 71**

**H. RESOLUTION NO. 11-141 - RESOLUTION AUTHORIZING A PUBLIC HEARING TO BE HELD ON AUGUST 9, 2011, TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR LINAMAR CORPORATION VIA INTER-LOCAL GOVERNMENT AGREEMENT WITH BUNCOMBE COUNTY**

Summary: The consideration of a resolution authorizing a public hearing to be held on August 9, 2011, to consider an economic development incentive grant for Linamar Corporation via inter-local government agreement with Buncombe County.

Linamar Corporation is a world-class designer and diversified manufacturer of precision metallic components and systems for the automotive industry, energy and mobile industrial markets. The company is proposing new, taxable, capital investment of $125,000,000 for location of a manufacturing facility to be located in the former Volvo facility in the City of Asheville. Linamar has requested consideration for a performance based incentive grant under the City of Asheville Economic Development policy. Further, the company has agreed that the incentive should be paid to Buncombe County through an inter-local agreement, to assist the County's purchase the Volvo property for use by Linamar. The City of Asheville is considering offering a performance-based grant totaling $2,200,000.

North Carolina state law requires a public hearing be held before an incentive grant can be officially awarded.

Pros:

- Performance driven grant that is distributed after job and investment is achieved;

- Supports job creation and capital investment in manufacturing in Asheville;
- Supports development of an identified economic cluster in the City; and,
- Supports regional and state cooperation in the project.

Cons:

- Grant is formulated based on use of 90% of value of new incremental machinery and equipment tax revenue for a 5 year period.

The project has a positive fiscal impact on property tax revenues received by the city. Initially (during the grant period), the City will receive approximately 10% of the new incremental M/E property tax revenues from the project. After 5 years, the City will henceforth receive 100% of the new city M/E taxes.

The economic development incentive grant for Linamar through the inter-local agreement with Buncombe County supports the City Council's Strategic Operating Plan as it addresses multiple focus areas. Under the Job Growth and Community Development focus area, the project supports the Goal of creating more collaborative and effective working partnerships between the COA, the business community, and other key organizations to effectively manage the city's regulatory environment while accomplishing economic development goals by meeting the objective to support diversified job growth and small business development. It supports the goal of supporting a strong local economy by continuing to implement sustainable growth and development policies by promoting sustainable, high density infill development that makes efficient use of existing resources.

City staff recommends Council approve a resolution authorizing a public hearing to be held on August 9, 2011, on an economic development incentive grant and inter-local government agreement with Buncombe County to support the location of Linamar Corporation.

Councilman Davis was pleased to recognize this important opportunity and partnership with the Economic Development Coalition and Buncombe County in bringing good jobs to our community.

Councilman Davis moved for the adoption of Resolution No. 141. This motion was seconded by Councilman Russell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 75**

**III. PRESENTATIONS & REPORTS:** None.

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF A PORTION THE TRINITY UNITED METHODIST CHURCH (EXCLUDING THE STAND-ALONE PARKING LOT ON THE WEST SIDE OF THE PLACE OF WORSHIP), LOCATED AT 587 HAYWOOD ROAD, FROM COMMUNITY BUSINESS II DISTRICT AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT/ CONDITIONAL ZONING**

**ORDINANCE NO. 3995 - ORDINANCE TO CONDITIONALLY ZONE A PORTION THE TRINITY UNITED METHODIST CHURCH (EXCLUDING THE STAND-ALONE PARKING LOT ON THE WEST SIDE OF THE PLACE OF WORSHIP), LOCATED AT 587 HAYWOOD ROAD, FROM COMMUNITY BUSINESS II DISTRICT AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT/ CONDITIONAL ZONING**

Vice-Mayor Newman opened the public hearing at 5:20 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone a portion of the Trinity United Methodist Church (excluding the stand-alone parking lot on the west side of the place of worship), located at 587 Haywood Road, from Community Business II District and RM-8 Residential Multi-Family Medium Density District to Community Business II District/Conditional Zoning for the purpose of using the existing education building as a school. This public hearing was advertised on July 15 and 22, 2011.

Ms. Fields said that the Trinity United Methodist Church, located at 587 Haywood Road in West Asheville, is seeking conditional zoning approval for a portion of the parcel identified as PIN 9643.35-4182 (excludes the stand-alone parking lot on the west side of the place of worship) from CBII (Community Business II) and RM-8 (Residential Multi-Family Medium Density District) to CBII CZ (Conditional Zoning) to allow for the use of the existing church education building for a K-8 school.

The current educational building for the church, located to the rear (north) of the principal church building, is proposed to be utilized for the school. This building contains approximately 17, 220 square feet of space in a two-story building with a basement. Sixteen (16) classroom are in the building which, when combined with the needs of the church itself, per the City's Unified Development Ordinance, would require a minimum of 127 parking spaces (32 for the school and 95 for the church). 103 total spaces are available on site and in the adjoining church parking lot to the west. Planning Department Staff has determined that the existing parking is adequate as shared parking (per Section 7-11-2(e) of the UDO) due to the offset schedule of usage for the school and church.

As the buildings and parking areas are existing site features and due to the space limitations on the site, modifications for landscaping are being requested. These modifications are as follows:

1. Modifications for the intrusions of the existing educational and church buildings into the required property line buffer to the east (20 foot buffer). At the northeast corner of the educational building, the building is 18.93' from the boundary so a 1.07' modification is being requested. At the northeast corner of the principal church structure, the building is 8' from the boundary so a 12' modification is being requested. The applicant is proposing to move a storage shed that sits beside the church structure and put in plantings and a privacy fence to provide a buffer between the property and the adjacent residents.
2. A modification is sought for the required buffer plantings along the northern end of the site where the property is adjacent to RM-8 zoning. That end of the site contains over 50 large to medium sized trees with a credit value (per the UDO) of 83 trees. There is also a fence and other undergrowth in an undisturbed condition. Because of the density of the existing vegetation and existing visual screening, the applicant is requesting that this satisfy the property line buffer requirements in this area.
3. A modification is similarly being sought for the required buffer along the eastern border of the property where the property is adjacent to three homes zoned RM-8. The property (along that border) has a mix of fencing, leyland cypress, evergreen trees, and other existing smaller vegetation. The applicant is proposing to plant as many of the required plantings as is possible along that border, along with adding a 6' wooden privacy fence that will connect to the existing wooden fence in place along a portion of that property line. Due to the physical constraints in this area, the applicant is requesting a modification to allow the proposed and existing plantings and the privacy fence to satisfy the property line buffer requirements in this area.
4. Along Martin Avenue, street trees and street parking buffer would be required per the UDO if this were a site without existing constraints. Along the northeast property line the property slopes between the existing open space and Martin Avenue and contains a vegetative cover and along the parking area a small change in street buffer would be

required to meet the standards set forth in the UDO. At both property line areas there are existing trees and shrubs; they not fully compliant with all requirements of the UDO.

Staff is supportive of these modifications as the site conditions are existing ones and the applicant is proposing to plant as many of the required additional plantings as is practicable. Schools are permitted in both the CBII and RM8 Districts but this application is being submitted due to the needed modifications. The applicant is maintaining significant existing vegetation already on site.

The applicant is also seeking approval for phasing on this project related to cost and time constraints. They are proposing to complete all site improvements within a three year period (from permit issuance) as follows:

- Year 1 – All fencing and landscaping along property lines adjacent to residentially-zoned properties will be in place. The storage shed will be moved. Handicapped parking and walkways from the fire escape will be provided.
- Year 2 – New street trees and street buffer will be put in along Balm Grove Avenue.
- Year 3 – New building impact and vehicular use area landscaping will be planted.

Staff and the Planning and Zoning Commission are supportive of this phasing plan.

The Technical Review Committee reviewed this proposal on June 20, 2011, and recommended approval with conditions. The applicant has already submitted revised plans addressing these conditions.

At their meeting on July 6, 2011, the Asheville Planning and Zoning Commission reviewed and recommended approval of this rezoning 7-0. Only one person, other than the applicant, commented on this matter, to support the adaptive reuse of the church building and others along Haywood Road. The use of underutilized church buildings and parking has been discussed at recent meetings of the Haywood Road Vision Plan Committee.

The applicant has held meetings with the neighboring property owners and staff has not been contacted concerning this rezoning proposal.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. That the proposed use or development of the land will not materially endanger the public health or safety.
   The applicant is proposing to use the current church educational building on weekdays for a K-8 school. The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance and all other applicable standards.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.
   Existing vegetation on the site is being maintained and no grading (except associated with additional landscaping) is required. While modifications are being sought for landscaping, the applicant is proposing to plant as many of the required plantings as is practicable.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.
Schools are a permitted use in the CBII and RM8 districts. Another K-8 school is located across Haywood Road.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.
No new construction is occurring as a result of this application. The application is to allow for additional use of a currently underutilized structure. The building in which the school would be housed is located behind the principal church structure which is located on Haywood Road, a major street in West Asheville on which a number of different uses are located.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.
The proposed use of the church building for educational purposes supports the statement found in the comprehensive plan that appropriately scaled non-residential uses that serve residents of an area should be permitted in appropriate locations.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.
The proposed use is located off of Haywood Road in West Asheville. Haywood Road is serviced by Transit Route 1 of the City's Transit System. The project has received approval from the City's Technical Review Committee concerning issues of water, fire, and police protection.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.
The City's Transportation Department has reviewed the plans for the traffic expected with this proposal and feels that it will not cause undue traffic congestion or create a traffic hazard.

Pro:

- The proposed use supports the City's goal that appropriately scaled non-residential uses that serve residents of an area should be permitted in appropriate locations.
- The proposal provides for more complete use of an existing building.

Con:

- None noted.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable and recommends approval of the conditional zoning request with the modifications concerning landscaping as requested and with the conditions set forth in the TRC report and the standards conditions listed below. At their meeting on July 6, 2011, the Asheville Planning and Zoning Commission unanimously (7-0) recommended approval of this conditional zoning.

Mr. Russell Davis, Civil Engineer representing the applicant, felt that this action zoning should have happened a long time ago and urged Council for their support. He said they have met with neighbors who are all supportive of this change.

The Pastor of Trinity United Methodist Church read a letter of support from a neighborhood representative Ms. Leigh E. Hillard.

Vice-Mayor Newman closed the public hearing at 5:32 p.m.

City Attorney Oast noted that even though the Church doesn't plan to use all 16 classrooms, there is nothing in the ordinance that would prohibit them from doing that. In addition, he reminded the Council that this rezoning is not limited to the current owner of the property and if it is rezoned it will be available for that use for anyone who might own it subsequently.

Vice-Mayor Newman said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith moved for the adoption of Ordinance No. 3995, to conditionally zone a portion of the Trinity United Methodist Church (excluding the stand-alone parking lot on the west side of the place of worship), located at 587 Haywood Road, from Community Business II District and RM-8 Residential Multi-Family Medium Density District to Community Business II District/Conditional Zoning subject to the modifications and phasing plan as recommended, and subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Russell and carried unanimously.

**ORDINANCE BOOK NO. 27 - PAGE 98**

**B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT FOR SUNSET PARK, LOCATED AT 2 SUNSET DRIVE**

Due to a legal advertising error this public hearing would be held on August 23, 2011.

## V. UNFINISHED BUSINESS:

**A. CONFIRMATION OF QUESTIONS TO BE SUBMITTED TO ALL PLANNING & ZONING COMMISSION CANDIDATES**

Vice-Mayor Newman said that each Council member had the opportunity of submitting three questions they wanted the Planning & Zoning Commission candidates to respond to in writing. The Boards & Commissions Committee narrowed all questions to arrive at a recommended five.

After a short discussion, Councilman Russell moved to send all candidates the following questions: (1) What is your vision for growth and development in Asheville; (2) Do you believe Asheville has taken an approach that is too "pro-growth" or "anti-growth" over the past 5-6 years? Please share your reasons; (3) How strictly should interpretation and application of the Unified Development Ordinance be applied?; (4) Name one Planning & Zoning Commission decision in the last 18 months you've agreed with and one you've disagreed with or would have struggled with. Please explain your rationale for each.; and (5) What are some of the positive or negative effects of Asheville's zoning regulations. This motion was seconded by Councilman Bothwell and carried unanimously.

## VI. NEW BUSINESS:

**A. RESOLUTION NO. 11-149 - RESOLUTION TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE IN A HUD CHOICE NEIGHBORHOODS PLANNING GRANT APPLICATION**

Community Development Director Jeff Staudinger said that this is the consideration of resolution to enter into a Memorandum of Understanding with Housing Authority of the City of Asheville in a HUD Choice Neighborhoods Planning Grant application.

The Housing Authority has been exploring for some time the possibilities of using US Department of Housing and Urban Development (HUD) HOPE VI funds to transform its public housing communities. The HOPE VI program (and earlier iterations) has awarded significant grants to housing authorities resulting in the restructuring of some of the most economically distressed public housing in the country. Program hallmarks have included creating mixed income housing where there was none, creating new opportunities for homeownership, revitalizing neighborhoods and reducing the concentration of lowest income households living in isolation and deteriorated physical and social conditions. The current administration has renamed this program "Choice Neighborhoods," and has broadened the scope beyond housing replacement to programmatically address neighborhood and social issues up front, with a focus on education, neighborhood stability and housing choice.

The Asheville Housing Authority performed a study in 2007-2008 to assess the physical condition of each of its public housing developments and determine which was the most physically distressed. The criteria of age, overall appearance, vacancy rates and police calls for service were used to rank the public housing developments in terms of HOPE VI threshold requirements. The report was released in October, 2008, and concluded that Aston Park Towers and Garden Apartments, Lee-Walker Heights and Pisgah View Apartments were candidates for HOPE VI funding. Since that time, HACA has invested significantly in the Aston Park development and has determined that Aston Park will not qualify for HOPE VI or Choice Neighborhoods funding under current guidelines for these programs. Lee-Walker Heights and Pisgah remain candidates for HOPE VI/Choice Neighborhoods funding, and they are the oldest and next-to-oldest public housing developments in the City, respectively.

HUD announced funding availability this summer for Choice Neighborhoods planning funding, with an application deadline of August 8, 2011. Approximately 20 Planning Grants of $300,000 each will be awarded. This planning grant would enable housing authorities to take the next steps in HOPE VI/Choice Neighborhood development by moving beyond assessment to development planning. These activities include resident and neighborhood engagement, architectural and engineering site and facility planning. The result of that planning activity would result in a proposed redevelopment of the public housing community and funding proposals for implementation.

Threshold criteria for grant consideration include the completed physical assessment, neighborhood crime rates, and vacancy rates. HACA has determined that Lee-Walker Heights and surrounding neighborhood appears to best meet the current criteria for consideration for Choice Neighborhood funding, and intends to submit an application for the planning grant. The selection of Lee Walker Heights is based on a neighborhood poverty rate that exceeds 40% and the highest per capita violent crime rate of any public housing development in the City, both of which are key factors in the HUD competition. He provided Council with a map of the proposed Choice Neighborhoods planning area. The grant program requires that a leadership team be identified, with the capacity to undertake the planning activities, oversee the work of consultants, and move the project to implementation. After consideration of the criteria, HACA believes that a team of Housing Authority and City staff meet the leadership team requirements. In support of the application, HACA is requesting that the City enter into a Memorandum of Understanding with

the Housing Authority to support the grant application, and if the application is successful, team with HACA in the Choice Neighborhood planning process.

The City has already made a financial commitment to this process. Council approved a CDBG grant of $40,038 in this year's annual action plan to support the anticipated planning process.

This project directly addresses the Strategic Plan objective to collaborate with the Housing Authority on HOPE VI or other strategies to revitalize public housing.

Pros:

- This opportunity continues the work of HACA towards public housing revitalization
- City partnership will enhance HACA's application

Con:

- City staff level of effort in support of the project will need to be assessed.

There is no immediate fiscal impact. CDBG funding has been allocated to the planning project. If the planning work leads to a HOPE VI (or similar) redevelopment project, significant resources for development will be needed. Funding available through the City, such as CDBG and HOME funding, and Housing Trust funds, would likely be requested. It is also possible that the proposed development/redevelopment would require assistance with infrastructure (roads, water, storm drainage). However, until the pre-development work is completed, it is impossible to know what those requests will look like. The planning period will be at least two years from grant award, probably commencing around the first of the year.

Staff recommends entering into a Memorandum of Understanding with the Housing Authority to participate in the HUD Choice Neighborhoods Planning Grant process.

Mr. David Nash, representing the HACA, noted the major investment in Aston Park Towers is yet to come and they are very close to completing the design. The grants are expected to be awarded in November or December and there would be a two-year planning period. He explained how they have looked at the three aspects of planning required by HUD – housing development that is the target of the application; people and neighborhood. He said that the map around Lee Walker Heights might be slightly modified as a result of meeting with the residents – the line on the east side would be at Biltmore Avenue (instead of going across Biltmore Avenue). In bringing the neighborhood component into the planning makes it essential that the City Planning Department be a part of this process. He asked that the resolution be amended slightly to say that the City of Asheville will participate as a co-applicant with the Housing Authority. That will allow HUD to consider the expertise of the City Planning Department in that neighborhood planning process.

In response to Councilman Bothwell, Mr. Nash said that the component of home ownership is not necessarily included, but it would be considered in the planning process.

Rev. Christopher Chiaronmonte commented about Aston Park Towers being sold to the rich.

Mr. Staudinger responded that this project is not for Aston Park Towers. Mr. Nash also responded that Aston Park Towers will continue to be available to low income residents in our community.

Vice-Mayor Newman said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 11-149, as amended to have the City be a co-applicant with the HACA, and that the map be slightly amended to reflect the east side line being Biltmore Avenue. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 89**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Rev. Christopher Chiaronmonte spoke the Asheville's treatment of the homeless.

Rev. Lisa Landis questioned the reasoning why the City issued a Request for Proposals for running a public access channel as she felt the URTV model was already in use and was a pilot for other public access stations.

Dr. Milton Byrd spoke about leadership and management.

**Claims**

The following claims were received by the City of Asheville during the period of June 20-30, 2011: Evelyn Oswell (Water), Nancy Cole (Streets), AT&T (Water), AT&T (Water), Kyle English (Parking Services) and Lisa May (Streets). These claims have been referred to Asheville Claims Corporation for investigation.

The following claims were received by the City of Asheville during the period of July 1 – 21, 2011: Enrique Romero (Sanitation), Anne F. Kaufman (Sanitation), Eddie Miller (Sanitation), The Bayshore Co. (Water), Alta Foster (Streets), Antonio Ripley (Transit), James Honey (Sanitation), Wilbur Neely Thomas (Police), Cythia Whatley (Transit), Jailateef Williams (Streets) and Eric Hutzler (Water). These claims have been referred to Asheville Claims Corporation for investigation.

**Closed Session**

At 6:06 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11 (a) (4); (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: City of Asheville; J. Jerome Jensen, et al (Biltmore Lake Annexation). The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a) (3); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously.

At 6:44 p.m., Councilman Smith moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

**VIII. ADJOURNMENT:**

Vice-Mayor Newman adjourned the meeting at 6:44 p.m.

Magdalen Burkson
CITY CLERK

MAYOR

Tuesday – August 9, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Esther E. Manheimer (participated during speaker phone during portion of meeting)

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**MOMENT OF SILENCE FOR FIRE CAPTAIN JEFFREY SCOTT BOWEN**

Mayor Bellamy asked for a moment of silence for Captain Jeffrey Scott Bowen who died on July 28, 2011, as a result of injuries sustained fighting a fire at 445 Biltmore Avenue, Asheville, N.C.

Mayor Bellamy read Capt. Bowen's obituary and said that community really suffered a loss on July 28. On behalf of City Council, she thanked the many who helped hold the arms up of the family members and the members of the Asheville Fire Department. She thanked the Public Works Department staff who helped the Asheville Fire Department on the day of the fire. She also thanked the various municipal and volunteer fire departments, Sheriff Departments, etc. across North Carolina who pitched in to support the Asheville Fire Department. Because she was out of town, she thanked Councilman Davis for stepping in and representing City Council during the City Employee Memorial Service for Capt. Bowen. She also expressed her sincere condolences to the Bowen family noting that Capt. Bowen served his community and family well.

Those members of Council who wished expressed their sympathy to the family of Capt. Bowen and also thanked all those who put their lives on the line for us every day.

City Council also expressed their deepest sympathy to the family of Mr. John Mark Crowe, a Metropolitan Sewerage District worker who was killed on duty on August 1, 2011.

**INVOCATION**

Councilman Bothwell gave the invocation.

**I. PROCLAMATIONS:**

**A. EMPLOYEE RECOGNITIONS**

City Manager Jackson recognized (1) Eric Hagen, Facilities Maintenance Division Manager in Building Safety Department. He successfully completed a nine month program at North Carolina State University and awarded an Energy Management Diploma for the University on June 6, 2011; (2) Sara McHone, Safety & ISO Compliance Coordinator - Water Resources Department Re-Certification of ISO 14001 Environmental Management Program; (3) Stephanie Monson, Urban Planner II. Ms. Monson received the American Institute of Certified Planners (AICP) certification in May 2011; (4) Randy Shaw, Recreation Center Director II - 2010 Distinguished Therapeutic Recreation Department; and (5) Wanda Burgess, Jeff Reble, Tim Reimers, Gilbert Domingo, Steven Frey, Joe Robinson, John Kutscher, James Allen, Robert

Clark, Steve Brown and Tony Rathbone – Their work in obtaining the GMIS Best Practices Award.

Mayor Bellamy thanked the employees on what they do on behalf of the City of Asheville and City Council. She was proud of City staff and looked forward to highlighting more accomplishments.

**B. INTRODUCTION OF VALLADOLID DELEGATION**

Mayor Bellamy introduced Mr. Rick Lutovsky, President of Asheville Sister Cities, and Mr. Russ Martin, Co-Chair of Valladolid Committee. Mr. Martin introduced a member of the Valladolid delegation. He said that Asheville Sister Cities will be planning a trip to Valladolid in November and hoped to have representation from the City of Asheville.

Mayor Bellamy read a proclamation proclaiming August 9, 2011, as "Asheville Sister City/Valladolid Day" in the City of Asheville.

**II. CONSENT AGENDA:**

Councilman Russell asked for discussion on Consent Agenda Item "G".

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 26, 2011**

**B. ORDINANCE NO. 3996 - ORDINANCE REDUCING THE SPEED LIMIT ON ARNOLD ROAD IN EAST ASHEVILLE FROM 35 MPH TO 25 MPH**

Summary: The consideration of an ordinance to enact and/or change a speed limit on Arnold Road in East Asheville.

According to state law (NCGS # 20-141), the statutory speed limit in North Carolina is 35 mph inside municipal corporate limits for all vehicles and 55 mph outside municipal corporate limits for all vehicles except for school buses and school activity buses.

Furthermore, local authorities may authorize by ordinance higher speeds or lower speeds than the statutory 35 mph speed limit on locally-maintained streets provided that the higher speed limit cannot exceed 55 mph. Speed limits authorized by local authorities are effective when the appropriate signs are erected.

City staff recently completed an engineering and traffic investigation and determined that a 25 mph speed limit would be reasonable and safe on Arnold Road from US 70 (Tunnel Road) to its dead-end. The subject street provides access to about 15 residential properties in an established neighborhood. Daily traffic volumes are less than 200 vehicles per day and the 85$^{th}$ percentile speed is 24.2 mph.

This action complies with the City Council Strategic Operating Plan in the Safety focus area by improving the "street experience" for all users including pedestrians, bicycles, and motorists in a primarily residential corridor.

Pros:

- City staff has been able to respond favorably to a citizen's request.
- Based on the 85$^{th}$ percentile speed, most drivers would adhere to a 25 mph posted speed limit.

Cons:

- The initial cost to install the appropriate speed limit signs is about $200.

- Typically, speed limit signs have a serviceable life of five to seven years.

The initial cost to install the appropriate speed limit signs is about $200 and is included in the current operating budget for the Transportation Department.

City staff recommends that City Council approve an ordinance enacting and/or changing a 25 mph speed limit on Arnold Road from US 70 (Tunnel Road) to its dead-end in East Asheville.

**ORDINANCE BOOK NO. 27 – PAGE 103**

**C. RESOLUTION NO. 11-150 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAPTURION NETWORK LLC FOR THE INSTALLATION OF NEW SCOREBOARDS AND VIDEO BOARDS IN THE ASHEVILLE CIVIC CENTER ARENA**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Capturion Network, LLC. in the amount of $ 254,715 for the installation of new scoreboards and video boards in the Asheville Civic Center arena.

The replacement of the existing scoreboards is another integral element of the Civic Center renovation plans. The new scoreboards will allow patrons to have an improved view of the score during sporting events from virtually anywhere within the arena. The addition of Video Screens in the Concourse area will allow patrons to follow the action while they are visiting the concessions areas.

The following bids were received:

| | |
|---|---|
| Capturion Network LLC, Laurel, MS | $254,715 |
| Daktronics Inc., Concord, NC | $293,055 |
| Everbrite, LLC, Pardeeville, WI | $293,000 |

The replacement of the scoreboards is part of the overall renovations in preparing to host the Southern Conference Basketball Tournament beginning in March 2012 and through 2015.

This action complies with the City Council Strategic Operating Plan's Fiscal Responsibility goal of developing strategic partnerships to leverage resources for infrastructure and CIP projects. This action also complies with the Civic Center Commission Master Plan that encourages continuing renovations for the facility, and supports the goal of developing new partnerships. It has been reviewed and recommended by the Civic Center Commission.

Pros:

- Project allows replacement of obsolete scoreboards.
- New scoreboards are much brighter and easier to see for the patrons.
- Project bid is below budget.

Con:

- None noted.

Funding for this contract is included in the Civic Center Capital Fund as part of the budget for the Southern Conference renovations.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Capturion Network LLC for $ 254,715 for the installation of new scoreboards and video boards in the Asheville Civic Center arena and concourse.

**RESOLUTION BOOK NO. 34 – PAGE 90**

**D. RESOLUTION NO. 11-151 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SPL INTEGRATED SOLUTIONS (AVI-SPL, INC.) FOR THE INSTALLATION OF A NEW SOUND REINFORCEMENT SYSTEM IN THE ASHEVILLE CIVIC CENTER ARENA RESOLUTION BOOK NO. 34 – PAGE**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with SPL Integrated Solutions (AVI-SPL, Inc), in the amount of $ 368,233.71 for the installation of a new Sound Reinforcement System in the Asheville Civic Center arena.

The replacement of the existing sound reinforcement system is another integral element of the Civic Center renovation plans. The new sound system will allow patrons to better hear announcements during sporting events and other events anywhere within the arena. This new system will also allow for better communication to patrons in the event of an emergency.

The following bids were received:

| | |
|---|---|
| SPL Integrated Solutions, Columbia, MD | $368,233.71 |
| Musicraft Inc., Roebuck, SC | $425,675.00 |
| Daktronics Inc., Concord NC | $497,680.00 |

The replacement of the sound reinforcement system is part of the overall renovations in preparing to host the Southern Conference Basketball Tournament beginning in March 2012 and through 2015.

This action complies with the City Council Strategic Operating Plan's Fiscal Responsibility goal of developing strategic partnerships to leverage resources for infrastructure and CIP projects. This action also complies with the Civic Center Commission Master Plan that encourages continuing renovations for the facility, and supports the goal of developing new partnerships. It has been reviewed and recommended by the Civic Center Commission.

Pros:

- Project allows replacement of an obsolete sound system.
- New sound system will create a much clearer sound experience during events.
- Project bid is below budget.

Con:

- None noted.

Funding for this contract is included in the Civic Center Capital Fund as part of the budget for the Southern Conference renovations.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with SPL Integrated Solutions (AVI-SPL, Inc), for $ 368,233.71 for the installation of new sound reinforcement system in the Asheville Civic Center arena and concourse.

**RESOLUTION BOOK NO. 34 – PAGE 91**

**E. RESOLUTION NO. 11-152 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION ON A BI-ANNUAL BASIS FOR THE RE-INSPECTION OF BRIDGES ON THE MUNICIPAL STREET SYSTEM**

Summary: The consideration of a resolution authorizing the Mayor to enter into a municipal agreement with the N.C. Dept. of Transportation (NCDOT) on a bi-annual basis for the re-inspection of bridges on the Municipal Street System.

In 1983 the Federal Highway Administration developed the Federal Off-System Bridge Replacement Program. The program is funded 80% through federal funds and 20% through City funds and administered by the NCDOT. To remain eligible for replacement funds and avoid penalties, it is required that all public bridges are inspected every two years. The NCDOT offers three options for meeting the bi-annual inspection requirements – (1) do the inspection with City forces; (2) the City to hire a consultant to do the inspections; (3) the City to allow NCDOT to do the inspections through a qualified private engineering firm.

Since 1983 the City has elected to execute an agreement with NCDOT to accomplish the required inspection thorough their personnel or engineering consultants. This process allows high numbers of bridges to be inspected under one contract or operation, and therefore, results in minimum inspection cost per bridge. It is anticipated the inspections cost to be $2,600 per bridge for the upcoming inspections. The City has 31 bridges requiring inspection this year, which brings the cost to $80,600. The City's share of 20% is $16,120. Funds for the City's share are budgeted in the Public Work's Professional Services budget line.

This action complies with City Council's Strategic Operating Plan in the Focus Areas – Fiscal Responsibility and Safe

Pros:

- Lower cost of bridge inspection due to high volume.
- Use of qualified engineering firms through DOT.
- Fulfills requirement for bi-yearly bridge inspections.
- Indicates areas for repair for PW staff.

Con:

- None identified

The fiscal impact is an expenditure of $16,120, budgeted in Public Work's Professional Services.

City staff recommends adoption of the resolution authorizing the Mayor to execute a municipal agreement with NCDOT for inspection of bridges.

**RESOLUTION BOOK NO. 34 – PAGE 92**

**F. RESOLUTION NO. 11-153 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A NEW ENTERPRISE LICENSE AGREEMENT WITH ESRI, INC. FOR GEOGRAPHIC INFORMATION SYSTEMS SOFTWARE**

Summary: The consideration of a resolution authorizing the City Manager to sign a new Enterprise License Agreement with ESRI, Inc. in the amount of $150,000 over 3 years payable in $50,000 yearly installments for Geographic Information Systems (GIS) software.

The City of Asheville has used ESRI GIS software for 13+ years as a keystone software information system. Many internal processes including asset management, code enforcement, public safety dispatch, stormwater utility billing, infrastructure maintenance, sanitation service, development services, etc., rely on GIS expertise and software. Citizens also rely on GIS for Internet information portals such as the mapAsheville applications (Development Mapper, Crime Mapper, and Priority Places, etc). City Council also relies on the City's GIS via planning and development decision visualizations.

The existing contract has held maintenance flat for the past 3 years. Typical increases in such software maintenance contracts average approximately 5% per year. With the execution of another 3 year contact, we will be able to hold our maintenance costs at $50,000 per year for next 3 years. Annual maintenance payments are required in order to keep software in a reliable and supported state. This contract also means that the City may provide unlimited staff installations as well as server software installation of this software thus saving money on additional licensing fees as a result of expanded services.

Specific City Council Strategic Operating Plan priority areas with goals that are supported by GIS technology include Community Building, Critical Services & Infrastructure, Natural & Built Environment, Economic Development, and Growth, Development & Land Use

Pros:

- Increased support of departmental business requirements via greater options for GIS software licensing.
- Ability to install additional software without additional purchases.
- Hold the line on increasing software maintenance costs.

Con:

- If continued funding for future years is not appropriated, some staff will lose ability to utilize some GIS software.

The first year cost of $50,000 was included in the adopted FY2011-2012 General Fund budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign an Enterprise License Agreement with ESRI, Inc.

**RESOLUTION BOOK NO. 34 – PAGE 93**

**G. RESOLUTION NO. 11-154 - RESOLUTION APPROVING REVISIONS TO THE CITY COUNCIL STRATEGIC OPERATING PLAN**

Summary: On June 14, the City Manager provided Mayor Bellamy with a draft of the 2011-2012 Strategic Operating Plan. Upon her review, she identified the need for multiple revisions.

Councilman Russell expressed concern on two of the following revisions: (1) Under Affordable, he personally liked the original wording of "Hold the line on taxes and support tax and fee relief" instead of Mayor Bellamy's revision to "Hold the line on taxes and minimize fees."; and (2) Under Job Growth & Community Development, he personally liked the original wording of "Support businesses through reductions in taxes, fees, and regulations" opposed to Mayor Bellamy's revisions of "Support business through limited taxes, fees, and regulations."

Mayor Bellamy felt the revised language is more reflective of what is happening.

Vice-Mayor Newman is overall very supportive of these broad goals. We are not going to be able to achieve these goals over the next few years.

Councilman Russell moved to approve the revisions as suggested by Mayor Bellamy, except under Fiscal Responsibility the original language in Goal I, Objective 2 "Sustain at least a 15% Fund Balance" remain the same. This motion was seconded by Vice-Mayor Newman.

Mayor Bellamy supported her revised language to "Increase fund balance towards the 15% threshold" as our Director of Finance & Management said that it would not happen this fiscal year. Councilman Russell responded that it would be Council's goal to make it happen.

Vice-Mayor Newman said the Strategic Operating Plan is not strictly tied to a fiscal year so theoretically the goals would influence the current budget and next year's budget. He would hope that over the next two budget cycles we can achieve that goal.

Mayor Bellamy has repeatedly said we need to be at the 15% in Fund Balance and was pleased that Council wants to achieve that goal.

Because this item is under the Consent Agenda and a motion has not been made to adopt the entire Consent Agenda at this time, Councilman Russell withdrew his motion.

**RESOLUTION BOOK NO. 34 – PAGE 94**

**H. RESOLUTION NO. 11-155 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT YAPPY HOUR ON AUGUST 11, 2011**

**RESOLUTION NO. 11-156 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE RANGE ROVER EVOQUE LAUNCH ON AUGUST 25, 2011**

**RESOLUTION NO. 11-157- RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS & FUN FESTIVAL ON SEPTEMBER 3 AND 4, 2011**

**RESOLUTION NO. 11-158 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ORGANICFEST ON SEPTEMBER 10, 2011**

**RESOLUTION NO. 11-159 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT ASHEVILLE CITIZEN-TIMES HALF MARATHON & 5K ON SEPTEMBER 17, 2011**

**RESOLUTION NO. 11-160- RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT OKTOBERFEST ON OCTOBER 8, 2011**

**RESOLUTION NO. 11-161- RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE SYMPHONY IN THE PARK ON SEPTEMBER 5, 2011**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Yappy Hour on August 11, 2011; the Range Rover Evoque Launch on August 25, 2011; the Lexington Avenue Arts & Fun Festival on September 3 and September 4, 2011; OrganicFest on September 10, 2011; Asheville Citizen-Times Half Marathon & 5K on September 17, 2011; Oktoberfest on October 8, 2011; and Symphony in the Park on September 5, 2011.

- Asheville Humane Society has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at Yappy Hour and allow for consumption at this event.

Yappy Hour be held Thursday, August 11, 2011, from 6:00 p.m. – 8:00 p.m., within the boundaries of Pack Square Park's Roger McGuire Green as per the event area limits referenced on a site map.

- Jaguar Land Rover Asheville has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Range Rover Evoque Launch and allow for consumption at this event.

  The Range Rover Evoque Launch will be held on Thursday, August 25, 2011, from 6:00 p.m. to 8:00 p.m. within the boundaries of North Pack Square and Pack Square Park's raised lawn as per the event area limits referenced on a site map.

- Arts2People has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at the Lexington Avenue Arts & Fun Festival and allow for consumption at this event.

  The Lexington Avenue Arts & Fun Festival will be held on Saturday, September 3, 2011, from 11:00 a.m. to 11:00 p.m. and Sunday September 4, 2011, from 11:00 a.m. to 9:00 p.m. within the boundaries of Lexington Avenue between the intersections of College Street and the I-240 overpass, Walnut Street between Lexington Avenue and Carolina Lane, as per the event area limits referenced on a site map.

- OrganicAthlete has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at OrganicFest and allow for consumption at this event.

  OrganicFest will be held on Saturday, September 10, 2011, from 10:00 a.m. to 8:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green as per the area limits referenced on a site map.

- Lend-a-Hand Foundation has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Asheville Citizen-Times Half Marathon & 5K and allow for consumption at this event.

  The Asheville Citizen-Times Half Marathon & 5K will be held on Saturday, September 17, 2011, from 5:30 a.m. to 12:00 p.m. along various streets with alcohol restricted to a portion of Otis Street, as per the event area limits referenced on a site map.

- The Asheville Downtown Association has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at Oktoberfest and allow for consumption at this event.

  Oktoberfest will be held on Saturday, October 8, 2011, from 12:00 p.m. to 6:00 p.m. within the boundaries of Wall Street between Otis Street and Battery Park Avenue, additionally extending into one lane of Battery Park Avenue at Wall Street as per the area limits referenced on a site map.

- The Pack Square Conservancy has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at Symphony in the Park and allow for consumption at this event.

  Symphony in the Park will be held on Monday, September 5, 2011, from 7:00 p.m. to 9:30 p.m. within the boundaries Pack Square Park's Roger McGuire Green, Reuter Terrace, City-County Parking Lot, and Spruce Street between College Street and Court Plaza as per the area limits referenced on a site map.

These actions have no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for the Asheville Humane Society, Jaguar Land Rover Asheville, Arts2People, OrganicAthlete, Lend-a-Hand Foundation, Asheville Downtown Association and the Pack Square Conservancy.

Con:

- Potential for public safety issues

There is no fiscal impact.

City staff recommends City Council adopt the resolutions authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Yappy Hour, Range Rover Evoque Launch, Lexington Avenue Arts & Fun Festival, OrganicFest, Asheville Citizen-Times Half Marathon & 5K, Oktoberfest, and Symphony in the Park.

**RESOLUTION NO. 11-155 - RESOLUTION BOOK NO. 34 – PAGE 98**
**RESOLUTION NO. 11-156 - RESOLUTION BOOK NO. 34 – PAGE 101**
**RESOLUTION NO. 11-157 - RESOLUTION BOOK NO. 34 – PAGE 104**
**RESOLUTION NO. 11-158 - RESOLUTION BOOK NO. 34 – PAGE 107**
**RESOLUTION NO. 11-159 - RESOLUTION BOOK NO. 34 – PAGE 110**
**RESOLUTION NO. 11-160 - RESOLUTION BOOK NO. 34 – PAGE 113**
**RESOLUTION NO. 11-161 - RESOLUTION BOOK NO. 34 – PAGE 116**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Russell moved for the adoption of the Consent Agenda with an amendment to Consent Agenda Item "G" to reflect under Fiscal Responsibility the original language in Goal I, Objective 2 "Sustain at least a 15% Fund Balance" remain the same. This motion was seconded by Councilman Davis Vice-Mayor Newman and carried unanimously.

## III. PRESENTATIONS & REPORTS:

## IV. PUBLIC HEARINGS:

**A. PUBLIC HEARING TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR LINAMAR CORPORATION VIA AN INTERLOCAL GOVERNMENT AGREEMENT WITH BUNCOMBE COUNTY**

**RESOLUTION NO. 11-162 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A $2,200,000 ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR LINAMAR CORPORATION VIA AN INTERLOCAL GOVERNMENT AGREEMENT WITH BUNCOMBE COUNTY**

Mayor Bellamy opened the public hearing at 5:36 p.m.

Economic Development/Civic Center Director Sam Powers said that this is the consideration of a resolution authorizing the City Manager to enter into a $2,200,000 economic development incentive grant for Linamar Corporation via an interlocal government agreement with Buncombe County. This public hearing was advertised on July 29, 2011.

Linamar Corporation is a world-class designer and diversified manufacturer of precision metallic components and systems for the automotive industry, energy and mobile industrial markets. The company is proposing new, taxable, capital investment of $125,000,000 for location of a manufacturing facility to be located in the former Volvo facility substantially all of which is located in the City of Asheville. Linamar has requested consideration of a performance based incentive grant under the City of Asheville Economic Development policy. Further, the company has agreed that the incentive should be paid to Buncombe County through an inter-local agreement, to assist the County's purchase the Volvo property for use by Linamar. The City of Asheville is considering offering a performance-based grant totaling $2,200,000.

The City of Asheville proposes to reimburse Buncombe County for a portion of the County's payments to Linamar. The performance-based grant will be paid over a five (5) year period. Payments begin after the investment is made, taxes are paid and verified, and the County requests payment. The first such payment is anticipated to be made no later than March 1, 2013, with subsequent payments to be made annually through and including 2017, together with a Job Creation payment. The payment schedule is set forth in the Inter-local Agreement. The amount of the annual payment will take into consideration the estimated annual property tax revenue attributable to the capital improvements, and each annual payment is projected to equal no more than approximately 90% of said estimated revenue.

The economic development incentive grant ties into City Council's Strategic Operating Plan as it addresses multiple focus areas of the Plan. Staff believes that the project will improve the economic position of the City and the area.

Pros:

- Performance driven grant that is distributed after job and investment is achieved;
- Supports job creation and capital investment in manufacturing in Asheville;
- Supports development of an identified economic cluster in the City; and,
- Supports regional and state cooperation in the project.

Con:

- Grant is formulated based on use of up to 90% of value of new incremental property tax revenue for a five year period.

The project has a positive fiscal impact on property tax revenues received by the city. Initially (during the grant period), the city will receive approximately 10% of the new incremental property tax revenue from the project. After five years, the City will henceforth receive 100% capture of new taxes.

City staff recommends Council approve the resolution authorizing an economic development incentive grant for Linamar Corporation via Inter-local government agreement with Buncombe County, not to exceed $2,200,000.

Rev. Lisa Landis felt that government has become corporate and raised several questions regarding whether the company would hire locally or from outside western North Carolina.

Mayor Bellamy said that this will result in 400 new jobs, not the company transferring their current employees to this area. They will be hiring at all levels and they are using A-B Technical Community College to train people to perform some of the tasks. This is a wonderful opportunity for our community to grow.

When City Attorney Oast handed out a missing exhibit from Council's on-line package of agenda materials (the County's agreement with Linamar), Councilman Bothwell was troubled that this information was not available to the citizens to comment on and that Council didn't know ahead of time what they were voting on. He agreed that it's good that our community is getting

new jobs; however, he does not support how communities and states have to compete for corporations to locate in their area. He could not support using our current taxpayer dollars to support a corporation that will be making millions of dollars.

In response to Mayor Bellamy, City Attorney Oast said this is a performance based contract, which means we don't make any economic development incentive payment until the tax revenue to be generated by this investment has been received by the City.

In response to Councilman Bothwell, City Attorney Oast said that the City will be providing the full range of municipal services during the 5-year period.

Vice-Mayor Newman wished we could compete purely on which community has the best schools, best infrastructure, best quality of life, but that is not reality. That is not the way economic development works. For companies that have the ability to locate anywhere in the country, we do have to compete based on many factors. If we are not willing to complete, we will not be able to attract new economic development projects. He felt that Linamar is an outstanding corporation and looked forward to a long partnership between Linamar and the City of Asheville.

Mayor Bellamy said that in the last 3-5 years our community has lost a lot of jobs and this action will add 400 new jobs, allowing some of our unemployed to get off food stamps, have health insurance and a steady income. Our people need jobs and we need to try to make that happen. In addition, the City's partnership with Linamar may lead to other businesses that supply Linamar products to want to locate here.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 11-162. This motion was seconded by Vice-Mayor Newman and carried on a 5-1 vote, with Councilman Bothwell voting "no."

**RESOLUTION BOOK NO. 34 – PAGE 119**

**B. CONTINUATION OF PUBLIC HEARING TO CONSIDER CLOSING SEVERAL PORTIONS OF UNOPENED RIGHTS-OF-WAY AND CITY STREETS WITHIN THE MONTFORD COMMONS DEVELOPMENT AREA**

Mayor Bellamy said that she has received a request from Mr. Kyle Evans, representing Montford Commons, LLC, requesting a continuance until October 11, 2011, as they are still waiting to receive the final funding commitment from HUD required to move the project forward. A representative from Frontier Syndicate explained that HUD continues to ask for information about their project and all arrows indicate that they should be approved soon. Therefore, Councilman Russell moved to continue this public hearing until October 11, 2011. This motion was seconded by Vice-Mayor Newman and carried unanimously

**V. UNFINISHED BUSINESS:**

**A. REVIEW OF PACK SQUARE PARK RATE STRUCTURE**

Director of Building Safety Director Robert Griffin said that this is a report on the rental fees for Pack Square Park after one year of operation.

The City of Asheville permits events and festivals with Pack Square Park through the Development Service Center. Coordination with all applicable departments assures the organizer

and the City the event or festival meets the applicable Building Codes and City of Asheville Ordinances that would specifically apply for the event or festival within Pack Square Park.

The first event reserving Pack Square Park was in May 2010 with full access in the summer of 2010. During the fiscal year of July 1, 2010 – June 30, 2011, the Park had 82 events scheduled within the boundaries. July – December had 48 events and January through June had 34 events. Many of these were in one of the three sections of the Park rather than the entire Park. The three sections that can be reserved for an event are the Roger McGuire Green, Reuter Terrance, and the raised lawn in front of the Biltmore Building. Some expansion of these areas can occur through the additional closure of Spruce Street to seamlessly connect the Roger McGuire Green with Reuter Terrace, the closure of North Pack Square to include the Vance Monument median in conjunction with reservation of the raised lawn, and the closure of South Pack Square to utilize the full Park as a continuous event site. At no point can Market Street be closed due to the need for emergency vehicle access for Police and Fire from the Municipal Building to College Street.

The reservation policy for the Park in July 2010 would allow only one event per day to be scheduled within any one section of the Park. This allowed the Park grounds to mature and for staff to assess the Park abilities. In early 2011, the Parks, Recreation, and Culture Arts Department and Building Safety Department reviewed the experiences and agreed to allow multiple events per day, per section of the Park, provided there is sufficient turnaround time for pre and post event logistics between activities. Consideration must also be made based on event type, scale, and impact of simultaneous events within close proximity such as with amplified sound, combined temporary infrastructure and attendance maximums.

The rental fees for Pack Square Park during the period of July 1, 2010, through June 30, 2011, were $100 for three hours with an additional $25 per hour for the raised lawn and $500 for three hours with an additional $100 per hour for the Reuter Terrace and Roger McGuire Green. The Terrace and Green had to be reserved as one unit. Many events reserved the combination of the Terrace and Green but only utilized one or the other based upon their activity. Many organizers asked that consideration be given to separating these areas for events. The Fees and Charges approved with the fiscal year beginning July 1, 2011, added a fee for Reuter Terrace at $100 for three hours with an additional $25 per hour. The rental fee for Roger McGuire Green kept the fee established at $500 for three hours. Beginning in July 2010 all events by a 501(c)3 non-profit organizations received a 75% reduction in Park fees. During the fiscal year ending June 30, 2011, $25,368.75 in discounts applied. Another change in the Fees and Charges beginning July 1, 2011, applied to the non-profit discount. After six events within a 12 month period the non-profit would no longer be eligible for the 75% reduction in fees.

In meetings with stakeholders, event organizers, the Downtown Commission, and others the fees for Pack Square Park appear to be appropriate and the process is producing few operating issues or conflicts. Operating issues and conflicts do arise but those are confined to specific issues associated with that event or circumstance rather than be directly related to fees and processes.

This action complies with the City Council Strategic Operating Plan by contributing to fiscal responsibility.

Pro:

- Provides enhanced use of Pack Square Park for events

Con:

- None

There is no fiscal impact with the policies in place and approved by Council.

City staff provides the staff report as information to City Council and requests confirmation or direction if they feel appropriate.

At the request of Councilman Davis, it was the consensus of Council to have City Manager Jackson provide Council with information regarding rental from previous years as a way to benchmark going forward.

At this time, Councilwoman Manheimer was contacted and participated in the following portions of the meeting via speaker phone.

**B. RESOLUTION NO. 163 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AMENDED CONTRACT WITH CURBSIDE MANAGEMENT TO PROVIDE RECYCLING FOR 95 GALLON RECYCLING CONTAINERS**

**ORDINANCE NO. 3997 - ORDINANCE AMENDING THE FEES & CHARGES MANUAL TO ESTABLISH THE RECYCLING FEE AT $3.50**

Director of Public Works Cathy Ball said that this is the consideration of (1) a resolution authorizing the City Manager to enter into an amended agreement with Curbside Management, Inc. (CMI) for the provision of recycling collection and related services for City of Asheville residences and facilities; and (2) an ordinance amending the Fees and Charges Manual such that the Recycling Fee will be $3.50 effective January 1, 2012.

Per Council's approval on May 10, 2011, to proceed with the implementation of a citywide residential single-stream recycling program with 95 gallon roll carts, an amendment to the current curbside residential recycling contract with CMI was drafted. The amended agreement allows for the provision of 95 gallon roll carts by the City of Asheville and requires CMI to service the roll carts, ensuring contents are recycled. The contract is at the same cost that we are paying now with a CPI index for a 10-year period of time. The contract also allows for the expansion of recyclable materials to include: additional plastic containers (e.g., yogurt containers, margarine tubs, clam shells, lids, etc.), gable top containers (e.g., juice and milk cartons), and aseptic containers (e.g., juice boxes). The collection frequency will remain unchanged with residential recyclables collected every other week. Staff estimates that the increase in materials recycled from the single-stream program will lead to an estimated disposal savings of $105,000 per year.

If approved, CMI will need six months to procure the necessary equipment to collect the roll carts and be ready to implement single-stream recycling. During those six months, the city would procure roll carts and all necessary equipment, implement a community education initiative, and deliver roll carts citywide.

Staff has evaluated entering into a contract with RecycleBank and is recommending that we delay any action on this item for a two year period. After recent efforts to benchmark with communities that have implemented RecycleBank, they have shared the difficulty in determining the impact the RecycleBank program has when it is implemented in conjunction with other changes such as the 95 gallon contain, single stream recycling and increased material collection.

Staff is recommending a fee increase from $2.95 per month to $3.50 per month effective January 1, 2012. The additional $0.55 would be used to cover cost outlined in the table below.

| Item | Description | Annual Cost | Monthly Cost per customer |
|---|---|---|---|
| 1 | Cost of debt service for 95 gallon recycling cart | $200K - $105 K (savings in tipping fee) = net **$95K** | $0.29 |
| 2 | Increase in CMI's Contract effective July 1, 2011 (per the current contract terms) | $16,500 | $0.05 |

| | | | |
|---|---|---|---|
| 3 | Increase in CMI's contract effective July 1, 2012 (CPI)(3.5% estimated) | $33,000 | $0.10 |
| 4 | Education/Outreach | $20,000 | $0.06 |
| 5 | Cart Maintenance | $17,000 | $0.05 |
| | TOTAL | $181,500 | $0.55 |

This action promotes the City's strategic priorities to be a leader in environmental sustainability initiatives by reducing waste and encouraging recycling.

Pros:

- Reduction of land filled solid waste
- Increased awareness of recycled material for residents
- Supports Council's sustainability goals

Cons:

- City pays the cost of roll carts and their maintenance ($217 K/year).
- CMI may pass to City fuel cost expenses in excess of $5.50 per gallon for fuel used for the collection of recycling material.

CMI's cost per household went up $0.05 July 1, 2011, per the current contract. Per the proposed contract, they would get a CPI adjustment every year for the length of the contract. We have conservatively estimated the CPI for FY 12 to be 3.5% and included that amount in the proposed rate increase. The total annual cost to the city for the CMI contract is $955,000 with pricing subject to adjustment based on the Consumer Price Index each year on July 1st. The term of the contract is for ten years. The fiscal impact of purchasing and maintaining the 95 gallon recycling carts and the education and outreach, along with the reduction in tipping fee expenses, is summarized in the chart above.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to enter into a contract amendment with Curbside Management, Inc. to provide curbside recycling collection programs and related services at an annual estimated cost of $955,000 for residential and City facility collections, as amended; and (2) an ordinance amending the Fees and Charges Manual such that the Recycling Fee will be $3.50 effective January 1, 2012.

Rev. Christopher Chiaronmonte spoke against the recycling fee.

Councilman Davis was glad we were delaying action on the rewards program. He acknowledged it is difficult to raise the fee; however, the more recyclables we can take out of the waste stream going to the landfill will reduce our tipping fees.

In response to Councilman Davis, Ms. Ball explained that we need at least six months to get the equipment and begin the educational program. They hoped to have a March implementation date

In response to Mayor Bellamy, Ms. Ball said that people can keep the smaller green cans or they can be placed inside the blue 95-gallon containers to be recycled. She said that as part of Curbside Management's contact, they provided the small Curbie recycle containers. When the City asked Curbside Management for a price on them providing the 95-gallon containers, we were able to do it a lot cheaper than for them to include that as part of their package.

When Mayor Bellamy confirmed that Curbside Management provided the smaller Curbie containers as part of their contract, but now we have to pay 100% of the new containers for them to pick up our recyclables. Ms. Ball said that they are allowing residents to keep the smaller Curbie containers. When staff evaluated this, there was no cost increase in costs, other than

provisions for a 10-year contract and a cost of living adjustment. They will be ordering new trucks and revamping and changing their system in order to accommodate the 95-gallon containers. Initially, if they had to do that and purchase the containers, there was going to me more of an increase in costs than us just providing the 95-gallon containers ourselves.

When Mayor Bellamy asked questions about how long it took the City to pay off the 95-gallon green containers, Ms. Ball said that the program began in 1998 and was phased in over a 3-4 period of time. The debt has been paid off. There were some areas served initially first and then we would add onto the fleet because we didn't buy all the automated trucks at the same time. By the time the program was fully implemented, it was probably 2001-02. Those green containers are the City's and we budget each year a certain amount of money for replacement and maintenance.

Mayor Bellamy could not support these actions as she felt this is not a good time to increase fees especially since we already have 80% of our residents already recycling. While 55-cents a month per bill does not seem a lot, but that is on top of an increased water rate and other changes to the water bill.

When Mayor Bellamy asked if we could add another recycle bin instead of going with the 95-gallon container at no cost to the City, Ms. Ball said we probably could, but staff didn't explore that option. Staff's concern when they originally had discussions about it was that it takes 7 of the smaller containers to fit into one 95-gallon container and at what point would you have issues of trash blowing off, etc. If someone calls and requests an extra bin, we do provide that to them now. We did not look at what impact it would be if we provided it City-wide.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 11-163. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Mayor Bellamy voting "no" (with Councilwoman Manheimer participating via speaker phone).

**RESOLUTION BOOK NO. 34 – PAGE 127**

Vice-Mayor Newman moved for the adoption of Ordinance No. 3997. This motion was seconded by Councilman Bothwell and carried on a 6-1 vote, with Mayor Bellamy voting "no" (with Councilwoman Manheimer participating via speaker phone).

**ORDINANCE BOOK NO. 27 – PAGE 104**

**C. DETERMINATION OF INTERVIEWS FOR PLANNING & ZONING COMMISSION**

The following individuals have applied for vacancies on the Planning & Zoning Commission and submitted required written responses: Joseph Minicozzi, Kenneth Fulford, Mark Mathews, Bruce Greene, David Mosrie, Jeremy Goldstein, Dustin Pulliam, Jane Gianvito Mathews, Kristy Carter, Jeff McGahee, Pete Hildebrand, Terry Meek, Abigail Emison, Ellen Nutter and Steve Rasmussen.

Vice-Mayor Newman said that the Planning & Zoning Commission is one of the City's most important citizen volunteer boards that we work with. They play a very important role in making recommendations to City Council on land use policies, as well as rezonings and major project. We had 15 great candidates who applied for the three vacancies. He reviewed the process leading up to this point, which included all candidates responding to written questions developed by City Council. City Council was very impressed by the outstanding and thoughtful answers that all candidates submitted. City Council asked the Boards & Commissions

Committee (Committee) to come up with recommendations of 5-6 candidates to be interviewed for 20 minutes in an open, televised session. The Committee asked each member of Council to identify the five candidates they would most like to interview. The Committee recommended interviewing 6 candidates, 5 of which are the candidates that received the largest number of votes requested by Council to be interviewed. The Committee recommended Abigail Emison, Jane Mathews, Jeremy Goldstein, Mark Mathews, Bruce Green and Kristy Carter be interviewed. Any two members of City Council can add any other applicants to the interview list.

Mayor Bellamy felt this process, which was agreed upon by City Council on November 9, 2010, was supposed to similar to the School Board process, being all Council members state their names at this formal meeting and the City Clerk would tabulate them to find the highest scorers for interviews. She questioned if her candidates would not be considered since she did not identify her five candidates prior to this meeting.

After a short discussion about the process, Vice-Mayor Newman said the intent on the process asking for the five top names prior to this formal meeting was due to the large number of applicants each receiving 20 minutes for interviews. The process was also that whatever recommendation comes from the Committee is still open to full deliberation by City Council. It is up to City Council on whether to accept their recommendation. He asked Mayor Bellamy for her five candidates which would be added to the existing list of candidates to determine the top 5.

Mayor Bellamy was not supportive of this process, whether it was decided in the Boards & Commissions Committee and discussed at the July City Council meeting as this process is contrary to any process used before. Traditionally we have put our names forward at the formal meeting, the names are tabulated and the top candidates move forward. Her top interview choices were Abigail Emison, Terry Meek, Joe Minicozzi, David Mosrie and Ellen Nutter.

Vice-Mayor Newman moved that Council interview Abigail Emison, Jane Mathews, Jeremy Goldstein, Mark Mathews, Bruce Green, Kristy Carter, Joe Minicozzi and Davis Mosrie. This motion was seconded by Councilman Smith.

Mayor Bellamy read into the minutes from the November 9, 2010, meeting the following updated process for appointing members to the Planning & Zoning Commission: "Vice-Mayor Newman, Chairman of the Boards & Commissions Committee, said that the Committee recommended City Council adopt an updated process for appointing members to the Planning & Zoning Commission, similar to the process used for School Board appointments, with interviews in Council Chamber, televised. Councilman Smith moved to use an appointment process, similar to the School Board appointments, for the appointments to the Planning & Zoning Commission. This motion was seconded by Councilwoman Manheimer and carried unanimously." That process included the City Clerk to send all applications and responses to City Council on August 5; City Council to determine who to interview on August 9; City Clerk to call and arrange interviews on August 10; and interviews and appointment made on August 23. After that unanimously agreed upon process, it changed. She was under the impression that City Council was following that process and would determine who to interview at this meeting.

When Vice-Mayor Newman felt the November 2010 meeting was not the last time this process was discussed, Mayor Bellamy read an excerpt of the June 14, 2011, minutes which read: "At the request of the majority of Council, City Clerk Burleson would provide City Council with all questions received on July 22, noting that the Boards & Commissions Committee would narrow them down to five at their July 26 meeting. At the formal meeting on July 26, the Committee will provide Council with their five recommended questions." In addition, she read from the July 26 Committee meeting as follows: "Clerk to e-mail all Council on Friday, August 5 all Planning & Zoning Commission candidates and ask them to e-mail me by 5:00 p.m. on Monday, August 8, their top five people they would like to interview in order of their preference. Those names will be complied by the Clerk and will be used as information by the Boards & Commissions Committee to narrow the interview down to five, for Council consideration at the

formal meeting on August 9." She noted that she was not present at the July 26 Council meeting and was operating under original process.

Mayor Bellamy was puzzled on why we needed two Council members to add another person to the interview list. She didn't mind sitting in the interviews for 3-4 hours listening to people talk about the future of our City and how it's going to grow. Vice-Mayor Newman said this was different in that we are allowing so much more time with each candidate.

Councilman Smith also felt that there should be some minimum of support for any candidate moving forward so that we don't want to have them go through the interview process needlessly if it's clear they would not be able to gain support of the majority of Council.

The motion made by Vice-Mayor Newman and seconded by Councilman Smith carried unanimously.

At the request of Councilman Bothwell, with the support of Mayor Bellamy, Steve Rasmussen was added to the interview list.

Vice-Mayor Newman said that all interviews will take place on the afternoon of August 23, 2011, with final appointments being made at the formal meeting later that evening.

At this time, Councilman Smith moved to recuse Councilwoman Manheimer from participating in the remainder of the meeting. This motion was seconded by Councilman Davis and carried unanimously. Councilwoman Manheimer hung up on the speaker phone.

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 11-164 - RESOLUTION TO NAME THE NEW COMMUNITY CENTER AT LIVINGSTON AND DEPOT STREET AS DR. WESLEY GRANT SR. SOUTHSIDE CENTER**

Assistant Parks & Recreation Director Debbie Ivester said that this is the consideration of a resolution to name the new community center at Livingston and Depot Street as Southside Community Center dedicated to Reverend Dr. Wesley Grant, Sr.

The City of Asheville is nearing the completion of the new community center located at the corner of Livingston and Depot Street, which is expected to be complete in late summer with a grand opening in the fall 2011. As part of the construction and preparation to open the new center, the Recreation Advisory Board appointed the Blue Ribbon Panel to lead the public process to name the new center. Panel members included Wanda Hawthorne and Wayne Wheeler of the Recreation Advisory Board; and Dee Robertson and Sherman Williams of the Reid Center Advisory Board.

The public was invited to submit suggestions of potential center names during May 1-June 20, 2011, via an online survey, phone hotline and mail. The purpose of public input was to gage the general public's interest in the center's name. She provided the Council with a list of center names acquired in the public process.

On June 29, 2011, the Blue Ribbon Panel convened to select its recommendation for the center name. The Panel's intent was to recommend a name that has the most significant meaning for the greatest number of people in Asheville, and take into consideration names submitted via public input. The Panel made the following recommendations to the Recreation Advisory Board:

1. Southside Community Center
2. Livingston Street Community Center

The Recreation Advisory Board considered the Panel's recommendation at its meeting on July 11, 2011. After review of the Panel's recommendation, review of all names submitted via public input, the Board chose to preserve the Southside name, and recognize Reverend Dr. Wesley Grant, Sr.'s contribution to Asheville and the African American community. The Board recommends naming the new center the Southside Community Center dedicated to Reverend Dr. Wesley Grant, Sr.

Pros

- This action complies with the City of Asheville's parks and recreation facility naming policy.
- The Southside name recognizes a significant part of Asheville's history and its African American community, and has meaning for a large segment of people who live in Asheville and their families.
- Dedicating the facility to Reverend Dr. Wesley Grant, Sr. honors a significant and well-respected community leader who greatly affected the African American community and Asheville.

Con:

- None

The Recreation Advisory Board recommends City Council to adopt a resolution naming the new community center at Livingston and Depot Street as Southside Community Center dedicated to Reverend Dr. Wesley Grant, Sr.

Councilman Bothwell moved to name the new community center "Southside Community Center." This motion died for lack of a second.

Councilman Russell moved to name the new community center "Southside Community Center dedicated to Reverend Dr. Wesley Grant, Sr." This motion was seconded by Vice-Mayor Newman.

Mayor Bellamy asked for a friendly amendment to name the new community center "The Reverend Dr. Wesley Grant Sr. Community Center dedicated to the Southside Community." Councilman Russell did not accept the friendly amendment because we create Boards & Commissions to hash through the different issues and come to a recommendation.

The following individuals spoke in support of naming the new community center more significantly for Dr. Wesley Grant Sr. (suggestion of Wesley Grant Center) because he was a significant and well-respected community leader who greatly affected the African American community as well as the entire City of Asheville; and also due to the number of votes cast from a survey in favor of naming the new center after him:

Rev. Louis Grant, son of Dr. Wesley Grant Sr.
Rev. Christopher Chiaronmonte
Rev. L.C. Ray
Dr. John H. Grant
Rev. Lisa Landis
Ms. Priscilla Ndiaye
Ms. Mildred Nance-Carson, Southside resident, member of the Recreation Board & Chair of the W.C. Reid Advisory Board
Mr. Fred English, east Asheville resident
Ms. Belinda Grant
Dr. Milton Byrd
Mr. Roy Harris
Rev. Otis Ware

Ms. Teresa Rogerson agreed for a name to be attached to the new community center, but we still live in a world where we have to receive funding. The name of the center needs to be something that can get the most funding so the center can service its constituents. She felt that perhaps if it was named "Grant Center" it would not be able to get as much funding.

When Councilman Russell asked Councilman Bothwell for his input since he is liaison to the Recreation Board, Councilman Bothwell felt the Recreation Board process was not open and fair, stressing he means no ill will towards Dr. Grant. He felt the survey was more of a concerted campaign and not a community poll. He felt if it's going to be a community naming, then it should be put on a ballot this fall and let people vote. He was given a list of 36 names of other prominent people in the community that deserve recognition as well. He stressed that he is not opposed to naming it for Dr. Grant, but he is opposed to the process used.

Councilman Russell is a believer in a good, fair process and as such, withdrew his motion.

Councilman Davis said building the new center was a long process and fairly high cost and was discouraged to see the community divided over naming it.

Councilman Davis moved to name the new community center the "Dr. Wesley Grant Sr. Community Center dedicated to the Southside Community." This motion was seconded by Councilman Smith.

Councilman Russell asked for a friendly amendment to name the new center the "Dr. Wesley Grant Sr. Southside Community Center." Councilman Davis and Councilman Smith accepted the friendly amendment.

In response to Mayor Bellamy, Ms. Ivester explained the process used, noting that they didn't expect people to solicit a specific name, but to allow the opportunity for the community to submit names.

Mayor Bellamy said that when we put Blue Ribbon Committees in place, they make recommendations only. The process was opened up for input and it was received. If we ask for community input, then we need to pay attention to it. It seems to her that there is a large volume of people supporting the name of Dr. Wesley Grant and she supported that name. If the community also wants the Southside community included in the name, she would support that as well.

Councilman Bothwell said the Blue Ribbon Committee also recommended that the main hall of the new community center have a hall of fame of the many who contributed to the Southside area. He felt that was a great idea and supported naming the new center after Dr. Grant, as the motion was stated.

Rev. Ware felt the new center did not need to include any reference to the Southside just because it happens to be in that part of the City. He used the example of the existing W.C. Reid Center, named after Mr. Reid who was not from the Southside area and who focused most of his attention in the Hillcrest area.

Pastor Spencer Hardaway supported the name, but expressed concerns with the process.

Rev. L.C. Ray thanked City Council for naming the community center for Dr. Grant as it means a lot to the community.

The amended motion made by Councilman Davis and seconded by Councilman Smith to name the new community center the "Dr. Wesley Grant Sr. Southside Community Center" carried unanimously.

Councilman Davis said that it was his intention to name the new community center "Dr. Wesley Grant Sr. Southside Center". Therefore, he moved to amend his original motion to name the new community center the "Dr. Wesley Grant Sr. Southside Center." This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 128**

**B. BOARDS & COMMISSIONS**

Regarding the Asheville-Buncombe Crime-Stoppers Board of Directors, the following individual applied for the vacancy: Princess Adams, Lynda Bell Haynes, Karl Katterjohn, Allen Brailsford and Daniel Ater. At the recommendation from the Boards & Commissions Committee, Vice-Mayor Newman moved to interview Princess Adams and Karl Katterjohn. This motion was seconded by Councilman Bothwell and carried unanimously.

Regarding the Recreation Board, the following individuals have applied for the vacancy: Barry Mundt, Richard Warren, John Parrish, Robert Pierce and John Broadbooks. At the recommendation of the Boards & Commissions Committee, Vice-Mayor Newman moved to interview John Parrish, Barry Mundt and Robert Pierce. This motion was seconded by Councilman Bothwell and carried unanimously.

Regarding the Buncombe County Tourism Development Authority, the following individuals have applied for the vacancy: John W. Ellis, Cesar A. Romero, Ruth T. Summers and Chris Bubenik. At the recommendation from the Boards & Commissions Committee, Vice-Mayor Newman moved to interview John W. Ellis, Ruth T. Summers and Chris Bubenik. This motion was seconded by Councilman Bothwell. Mayor Bellamy spoke in support of the work by Ms. Summers with the Grove Arcade and moved to appoint Ms. Summers. This motion was seconded by Councilman Davis. Because Councilman Russell felt this was a very important board and was interested in interviewing the three candidates, Mayor Bellamy withdrew her motion. It was the consensus of Council to interview the three candidates recommended by the Boards & Commissions Committee.

**RESOLUTION NO. 11-165 - RESOLUTION APPOINTING MEMBERS TO THE AFFORDABLE HOUSING ADVISORY COMMITTEE**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Affordable Housing Advisory Committee.

On June 14, 2011, City Council established the Affordable Housing Advisory Committee.

The following individuals have applied for vacancies: Allison Bond, Anthony Goodson Jr., William Irby, David Dills, M. Mae Creadick, Brian K. Alexander, Richard Warren, Barber Melton, Scott Dedman, Lindsey Simerly and Paul Reeves.

He said the Council has identified several groups who have housing experience that they would like to appoint to this new Committee. The Boards & Commissions Committee recommended appointing Scott Dedman, William Irby, Allison Bond, Brian Alexander, Barber Melton, Lindsey Simerly and Anthony Goodson Jr. They also recommended Council interview Paul Reeves, M. Mae Creadick, David Dills and Richard Warren.

Councilman Bothwell felt that Mr. Dedman is certainly an expert in the non-profit affordable housing area; however, he indicated on his application that he had no conflict of

interest. He felt there would be an obvious conflict of interest, since Mountain Housing Opportunities is the largest recipient of City funding for affordable housing, and he would have to recuse himself from voting on matters affecting his employer.

Vice-Mayor Newman said that the Boards & Commissions Committee discussed the conflict of interest issue. He said this is a new committee and how they end up spending their time and what issues they focus on is to be determined. Council has given them a broad charge, but how they choose to prioritize their time will be up to them to decide. It is our general intent that the group will focus on broad policy recommendations to City Council as it relates to affordable housing needs in Asheville, opposed to more specific recommendations on allocation of Community Development Block Grant funding or Housing Trust Fund dollars. There is nothing in the current mission charge for them that strictly precludes them from that; however, that will be discussed at a future Housing & Community Development Committee meeting to perhaps let them know that is not what we are looking for them to do. It would be more broad policy recommendations. Certainly if there was a recommendation regarding funding, any member of the Committee would have to recuse themselves with a disclosed conflict of interest.

Councilman Davis said that the conflict of interest issue can be raised by Brian Alexander, with Homeward Bound, as well. We will have to clarify the mission and role of the Committee.

Councilman Russell moved to support the recommendation of the Boards & Commissions Committee and (1) appoint Scott Dedman, William Irby, Allison Bond, Brian Alexander, Barber Melton, Lindsey Simerly and Anthony Goodson Jr. to each serve a three-year term, or an initial two-year term respectively, until their successors have been appointed; and (2) interview Paul Reeves, M. Mae Creadick, David Dills and Richard Warren. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 129**

**RESOLUTION NO. 11-166 - RESOLUTION APPOINTING A MEMBER TO THE POLICE OFFICERS AND FIREFIGHTERS DISABILITY REVIEW BOARD**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Police Officers and Firefighters Disability Review Board.

Mr. James Lewis has resigned from the Police Officers and Firefighters Disability Review Board, thus leaving an unexpired term until July 19, 2012.

The following individual has applied for this vacancy: Christopher James Bradford.

The Boards & Commissions Commission recommended appointing City Clerk Magdalen Burleson.

Vice-Mayor Newman moved to appoint Magdalen Burleson to serve the unexpired term of Mr. Lewis, term to expire July 19, 2012, or until her successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 130**

**RESOLUTION NO. 11-167 - RESOLUTION APPOINTING A MEMBER TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the River District Design Review Committee.

The term of Mark Allison will expire on September 1, 2011.

The following individuals have applied for the vacancy: Darren Green, Chase Brugh, Philip Ellis, Jay Marino, Laurie K. Miller, Tadd Clarkson, Stuart Smith, Michael McDonough and Leslie McCormick.

The Boards & Commissions Commission recommended reappointing Mr. Mark Allison.

Vice-Mayor Newman moved to reappoint Mark Allison to serve an additional three-year term, term to expire September 1, 2014, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

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**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Jim MacKenzie suggested working with the City on trying to get tourists to volunteer one or two days with a non-profit. Under direction from Council, City Manager Jackson said that he would contact Mr. MacKenzie and have him contact the City's Neighborhood/Volunteer Coordinator.

Rev. Christopher Chiaronmonte spoke about the homeless issue in Asheville.

Rev. Lisa Landis spoke about the shutting down of URTV and why no one will tell her why they were denied funding.

Mr. Chris Oaks was opposed to street preachers using amplification in the downtown area. Mayor Bellamy noted that City Attorney Oast is researching that issue.

Mr. Fred English thanked Vice-Mayor Newman for his service with the City of Asheville.

**Lawsuits**

A civil action has been commenced in Superior Court on July 13, 2011, regarding Marc Tickle vs. City of Asheville and Randall S. Rhodes. The nature of the proceeding is a complaint for negligence. This matter will be handled by an attorney outside the City Attorney's Office.

The City was served with a Complaint on August 1, 2011, from Fannie Bishi vs. City of Asheville and Ivan Petrovich Dariy. The Complaint is for negligence. This matter will be handled by an attorney outside the City Attorney's Office.

**Closed Session**

At 8:08 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11 (a) (4); (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: City of Asheville; J. Jerome Jensen, et al (Biltmore Lake Annexation). The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a) (3); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the

information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously. This motion was seconded by Councilman Davis and carried unanimously.

At 8:34 p.m., Councilman Russell moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 8:34 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – August 23, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Davis gave the invocation.

**I. PROCLAMATIONS:**

**A. PRESENTATION TO CITY OF ASHEVILLE FROM EMPLOYEES WHO ARE ACTIVE MILITARY RESERVISTS**

Senior Firefighter Barnaby Raikes and other military reservists presented a plaque to City Manager Jackson thanking the City of Asheville for its support to activated military employees. The plaque reads "Presented to the City of Asheville for its continuing support of your employees who serve in the Armed Forces of the United States, we thank you".

Mayor Bellamy thanked City Manager Jackson for making sure that our military employees have a job when they come back. On behalf of City Council, she said we are proud of everything our military employees do.

**B. PROCLAMATION PROCLAIMING AUGUST 27, 2011, AS "TRANSITION ASHEVILLE DAY"**

Mayor Bellamy read the proclamation proclaiming August 27, 2011, as "Transition Asheville Day" in the City of Asheville. She presented the proclamation to Mr. Stan Corwin, Ms. Kathy Scott, Mr. Chas Jansen and Ms. Jeanie Martin, who briefed City Council on some activities taking place during the day.

**II. CONSENT AGENDA:**

At the request of Councilwoman Manheimer Consent Agenda Items "G" was removed from the Consent Agenda due to a conflict of interest.

At City staff's request, Mayor Bellamy added (with the consensus of Council) an item on the Consent Agenda which will rescind Resolution No. 11-151 due to an accounting error, and authorize the City Manager to execute a contract with SPL Integrated Solutions for the installation of a new sound reinforcement system in the Asheville Civic Center arena.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 9, 2011**

**B. RESOLUTION NO. 11-168 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BRANTLEY CONSTRUCTION COMPANY LLC FOR RENOVATIONS OF THE ASHEVILLE CIVIC CENTER**

**ORDINANCE NO. 3998 - BUDGET AMENDMENT FOR CIVIC CENTER RENOVATIONS**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Brantley Construction Company, LLC in the amount of $ 4,077,921 for renovations of the Asheville Civic Center, and a budget amendment in the amount of $4,105,000 from debt proceeds and box office revenue.

This contract incorporates major components of the overall renovation of the arena, locker rooms, concourse, banquet hall, museum area and concessions areas are some of the most integral elements of the Civic Center renovation plans. The overall renovations are being done in preparation to host the Southern Conference Basketball Tournament beginning in March 2012 and through 2015. These renovations will give patrons and promoters a much improved experience when attending or scheduling concerts, sporting events and other special events throughout the years to come. The improvements will also provide a much better experience for the athletes and entertainers when they come to compete and entertain. The overall renovations will provide a much brighter and inviting venue for many years to come.

The following bids were received:

- Melloul Blamey Construction SC Ltd., Greenville, SC: $4,548,000
- The Harper Corporation, Greenville, SC: $4,491,220
- Kearey Builders, Inc., Statesville, NC: $4,450,070
- H & M Constructors, Asheville, NC: $4,346,800
- Brantley Construction Company, LLC, Canton, NC: $4,077,921

By approving this contract, total project expenses under contract to date will be $6,126,382. The table below summarizes existing contracts in place along with the construction contract under consideration.

| **Funding Uses/Project Components** | **Amount** |
|---|---|
| Design | $ 480,000 |
| Seating Replacement | $ 775,000 |
| Scoreboard Replacement | $ 255,000 |
| Sound System | $ 418,461 |
| Technology Upgrades and Asbestos Abatement | $ 120,000 |
| Construction | $4,077,921 |
| TOTAL | $6,126,382 |

In order to fund this contract, staff is also seeking approval of a budget amendment in the amount of $4,105,000 to budget revenue from debt proceeds and the Civic Center box office. Approval of this budget amendment will bring the total budget for Civic Center renovations to $6,975,000. The table below summarizes the project budget including the proposed budget amendment.

| FY 2012 CIVIC CENTER PROJECT BUDGET | |
|---|---|
| **EXISTING BUDGET** | |
| **Funding Sources** | **Amount** |
| Tourism Development Authority | $ 1,750,000 |
| Buncombe County | $ 320,000 |
| City of Asheville Capital Contributions | $ 800,000 |
| **Total Existing Budget** | **$ 2,870,000** |
| **PROPOSED BUDGET AMENDMENT** | |
| **Funding Sources** | **Amount** |
| Civic Center Box Office Proceeds | $ 580,000 |
| Debt Proceeds | $ 3,525,000 |
| **Total Budget Amendment** | **$ 4,105,000** |
| **TOTAL PROJECT BUDGET PENDING** | **$ 6,975,000** |

The remaining project budget is anticipated to be used for additional design fees and the procurement of equipment and furnishings such as folding chairs, concession equipment, etc.

The remaining scope of the project is contingent upon continued partnership funding and could include stage and seating improvements, mezzanine improvements, mechanical system upgrades, and exterior and lobby renovations. Discussions with funding partners are ongoing.

This action complies with the City Council Strategic Operating Plan's Fiscal Responsibility goal of developing strategic partnerships to leverage resources for infrastructure and CIP projects. This action also complies with the Civic Center Commission Master Plan that encourages continuing renovations for the facility, and supports the goal of developing new partnerships. It has been reviewed and recommended by the Civic Center Commission.

Pros:

- Project provides for a much better experience for the athletes and patrons alike.
- Energy efficiency improvements to existing lighting system will meet national television broadcast standards while creating cost savings.
- Improved flow of patron traffic to and from the arena floor through the use of a new elevator and additional access points from the concourse area.
- Improved concession revenues through increased number of concession points of sale and improvements to existing locations.
- Much needed improvements to the locker rooms for athletes and officials.
- Much needed improvements to the Banquet Hall.
- Increase in useable space with the renovation of the Museum area located under the Thomas Wolfe Auditorium.
- Enhancements to safety equipment such as Smoke Exhaust system upgrades and fire suppression upgrades around the concourse.
- Project bid is below budget.

Con:

- None.

Based on current estimates, the annual debt service for the $3.525 million in loan proceeds will be approximately $307,000 beginning in FY 2012-13. Payments will likely extend over 20 years with the annual debt service amount decreasing over this time. The funding for this

debt service will come from the annual capital contribution that the General Fund makes to the Civic Center.

The current favorable construction climate, the ability to leverage partnerships, and capital already raised has created opportunities for additional funding and partnerships to address remaining important components of the renovations. These components include additional energy improvements and components to increase the ability of the venue to be a tourism destination. These currently unfunded items are approximately two million dollars.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Brantley Construction Company, LLC for $4,077,921 for the Renovation of the Asheville Civic Center arena, and a budget amendment in the amount of $4,105,000 from debt proceeds and box office revenue.

**RESOLUTION BOOK NO. 34 – PAGE 132**
**ORDINANCE BOOK NO. 27 - PAGE 106**

**C. RESOLUTION NO. 11-169 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH THE EAST ASHEVILLE YOUTH ACTIVITIES BOOSTER CLUB INC. FOR THE PROPERTY LOCATED AT NEW HAW CREEK ROAD AND BELL ROAD, KNOWN AS THE CHARLIE BULLMAN PARK**

Summary: The consideration of a resolution authorizing the City Manager to execute a Lease Agreement between the East Asheville Youth Activities Booster Club, Inc. and the City of Asheville for real property located at New Haw Creek Road and Bell Road.

The subject property (PIN # 9659-92-4876-00000) at New Haw Creek Road and Bell Road is owned by the East Asheville Youth Activities Booster Club, Inc. and has been utilized by the City for many years as Charlie Bullman Park. This park is approximately 5.27 acres containing three ball fields and a parking area.

The proposed term for this lease is five years, at a rental rate of $1.00 per year. The City will also be responsible for paying related tenant expenses, including utility bills and upkeep.

This action complies with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it maximizes the level of service available to the community by using partnerships as a way to offer parks and recreation services.

Pro:

- Continue a community partnership as an affordable means to provide a public park

Con:

- None

Funding for utilities and upkeep of the park are included in the Parks, Recreation, and Cultural Arts FY 2011-12 budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute the lease agreement with the East Asheville Youth Activities Booster Club, Inc. on behalf of the City of Asheville.

**RESOLUTION BOOK NO. 34 – PAGE 133**

**D. RESOLUTION NO. 11-170 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR THE 2011 FEDERAL TRANSIT**

**ADMINISTRATION APPORTIONMENT AND FOR THE MAYOR TO EXECUTE SAID GRANT**

Summary: The consideration of a resolution authorizing the City Manager to apply for the 2011 Federal Transit Administration (FTA) apportionment in the amount of $1,958,256; and for the Mayor to execute said grant.

The City of Asheville is going to apply for the 2012 annual apportionment using a Federal Transit Administration apportionment under the Department of Defense and Full-year Continuing Appropriations Act 2011. The annual apportionment (Section 5307) authorizes Federal funding for capital and in some cases, for operating assistance, and planning activities for transit in urbanized areas. The City was reclassified as Urbanized Area, as part of the 2000 Census and therefore restricted in its ability to use operating assistance. However, the City, among others, will be allowed to use part of this year's allocation in operating assistance, in the amount of $484,022.

As part of the reclassification Henderson County's Apple Country became part of the transit systems in the Metropolitan Area. As such the City and the County share the federal allocation. The County will receive approximately $440,000 of the total allocation. The City and the County had signed a Sub-recipient Agreement in which it is specified how the funds are disbursed as well as the oversight of these funds. The city is responsible before FTA of the use of these funds and owns all the capital items Henderson County purchases with the allocation.

The City intends to use these funds for FY 2012 expenses, such as operating assistance, and for capital items allowed under the Master Agreement, such as preventive maintenance, Americans with Disabilities Act (ADA) service, and for other minor capital items (automated vehicle location system, small equipment for the buses, etc.). One percent of the allocation must be used for security purposes.

This action complies with the City Council Strategic Operating Plan by supporting the fiscal responsibility focus area, specifically operating the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- These funds were budgeted in the FY 2012 City Budget and will offset costs related to operations, preventive maintenance and ADA services.

Con:

- The city has to contribute with 20% of the capital items, including preventive maintenance and ADA services; and 50% of the operational expenses.

The total amount of FTA transit funding available to the City in FY 2012 will be $1,958,256. Approximately $440,000 of this amount will be allocated to Henderson County, leaving $1,518,256 for City transit expenses. The FTA transit apportionments are already included in the FY 2012 adopted budget.

City staff recommends City Council authorizing the City Manager to apply for the 2011 Federal Transit Administration apportionments in the amount of $1,958,256; and for the Mayor to execute said grant.

**RESOLUTION BOOK NO. 34 – PAGE 134**

**E. RESOLUTION NO. 11-171 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LICENSE AGREEMENT WITH RIDING PARTNERS INC. (D/B/A BIOWHEELS RTS) FOR THE PURPOSE OF INSTALLING AND OPERATING AN ELECTRIC VEHICLE CHARGING STATION ON A PORTION OF CITY-OWNED PROPERTY AT 161 S. CHARLOTTE STREET**

Summary: The consideration of a resolution authorizing the Mayor to execute a License Agreement with Riding Partners, Inc. (dba BioWheels RTS) for the purpose of installing and operating a solar-powered electric vehicle charging station on city-owned real property at 161 S. Charlotte Street, Asheville, NC.

Riding Partners, Inc. was awarded an NC Green Business Fund Innovation Grant in early 2011 to develop and install three prototype solar powered electric vehicle charging stations in Western North Carolina. This innovation infrastructure increases the benefits of electric vehicles by providing fuel from renewable energy sources. Riding Partners approached the city to solicit a public private partnership to locate one station through a public property land lease (license agreement). Through the NC Green Business Fund Innovation Grant and public private partnerships, Riding Partners intends on refining a sustainable business model for electric vehicle fueling infrastructure.

The proposed License Agreement will enable Riding Partners to install a 31.5' x 16.5' solar PV awning at the corner of S. Charlotte and Eagle Streets. The roof will include 20 solar panels that will generate 4.9 KW of electricity for the station. At the base of the support piers for this awning, Riding Partners, Inc. will install 3 electric vehicle charging units, with access to these charging units available from six adjacent parking spaces within the city parking lot. Riding Partners, Inc. will have the ability to sell "charge events" (i.e. fueling events) to electric powered vehicles and will be fully responsible for the ongoing maintenance for the equipment. The term of the agreement is proposed for ten years total, with a 5 year initial period, with the option to renew for an additional 5 years.

At present, it is recognized that there is strong demand for employee and customer parking during the normal business hours of the Public Works Department and Development Services Center. Therefore, during the initial two years of the license agreement, parking in the six spaces adjacent to the electric vehicle station will be open use and non-exclusive. In year three of the license agreement, it is contemplated that there will be an increased demand for designated access for these spaces, as electric vehicle parking only. Based on industry metrics, the license agreement will include language that provides for one of the six spaces to be designated as "Electric Vehicle Parking Only" at the point that there are 50 such vehicles registered in Buncombe County. Designating additional spaces will be reviewed each additional year of the license agreement, using the same metric (e.g. 2 designated spaces per 100 registered electric vehicles, etc.) Additionally, City staff notified the operators of the downtown farmer's market, Appalachian Sustainable Agriculture Project (ASAP), of this proposed use and there are no conflicts with the electric vehicle charging station and the ongoing use of the parking lot for the downtown City Market.

The City and Riding Partners, Inc. agreed to set the rental rate a $1 per year in order to support development of this fueling infrastructure and commit public leadership to renewable energy and alternative transportation. As an in-kind service, Riding Partners, Inc. has proposed to allow City employee and fleet vehicles free electric charge events for the first two years of operation, and a 20% reduced rate thereafter.

The Notice of Intent to enter into a License Agreement with Riding Partners, Inc. was published on August 12, 2011, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested.

This action complies with the City Council Strategic Operating Plan Objectives to work with regional partners to create incentives for green building, energy conservation and energy independence.

Pros:

- Demonstrates continued national leadership in developing the electric vehicle market through providing fueling infrastructure.

- This maximized the use of public land for the purpose of local renewable energy production.

Con:

- Commits a portion of the Public Works parking lot for a minimum of five years.

No expenses or in-kind services are required of the city for this license agreement. The city will receive no rental income from this lease. In- kind service provided to the city through this lease agreement includes: free charging events for municipal fleet vehicles for the first two years after which point municipal fleet vehicles will receive a 20% discount on charge events.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute a License Agreement with Riding Partners, Inc. (dba BioWheels RTS) for the purpose of installing and operating a solar-powered electric vehicle charging station on city-owned real property at 161 S. Charlotte Street, Asheville, NC.

**RESOLUTION BOOK NO. 34 – PAGE 135**

**F. RESOLUTION NO. 11-172 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE LAND-OF-SKY REGIONAL COUNCIL OF GOVERNMENTS TO OVERSEE THE COMPLETION OF THE LONG RANGE TRANSPORTATION DEMAND MANAGEMENT STUDY**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the Land of Sky Regional Council of Governments (COG) to oversee the completion of the Long Range Transportation Demand Management Study.

The Long Range Transportation Demand Management (TDM) study is the application of policies and strategies that attempt to optimize existing transportation resources and infrastructure by mitigating single occupancy vehicle use in a defined area. TDM programs have the potential to deliver better environmental outcomes, lower parking demands, improved public health, stronger communities, and a more prosperous and livable city.

The TDM program was hosted by the city from FY2005 until FY2011, focusing on promoting alternatives to single occupancy vehicles mainly inside the City limits. The program was paid by the city (50%) and the N.C. Dept. of Transportation (NCDOT – 50%). NCDOT expressed the need to set regional goals to improve the quality of life for the citizens of Western North Carolina by providing education, support and resources that enhance and promote alternatives to driving alone. In order to evaluate the adequacy of these goals and to continue the program, the NCDOT wants to perform an analysis, the Long Range TDM study, and provide new strategies that will allow TDM to grow accordingly to regional needs.

Due to the regional nature of the study, the NCDOT recommended the COG to manage the study. The COG will hire a consultant to develop this study and will be responsible for completion. The estimated cost is $100,000 and will be funded by Section 5307 of the Federal Transit Administration (FTA), with existing funding that will otherwise be lost, in the amount of $80,000. The 20% or $20,000 match is provided by NCDOT.

The City, as designated recipient, will be responsible for overseeing the use of these funds according to FTA and NCDOT regulations. This task will require the use of city resources, mainly staff.

This action complies with the City Council Strategic Operating Plan by supporting the fiscal responsibility and green and sustainable focus areas, specifically operating the City of Asheville to the highest levels of fiscal responsibility, leveraging funding from Federal and State

agencies; and setting and developing a plan for implementing a community energy reduction goal.

Pros:

- The project will be funded by the FTA in the amount of $80,000 and the NCDOT in the amount of $20,000.
- This plan will address NCDOT and City concerns about the future of the TDM program.
- This plan will provide guidance for future TDM initiatives regarding regional needs.

Con:

- The City oversees the project and uses city resources, mainly staff time to do so.

The total project cost is $100,000; 80% of this total will be paid by the FTA and 20% by the NCDOT. The city will seek reimbursement from both agencies. The budget for this project was approved by City Council in January 2011.

City staff recommends City Council to adopt a resolution authorizing the City Manager to enter into an agreement with the Land of Sky Regional Council of Governments to oversee the completion of the Long Range TDM Study.

**RESOLUTION BOOK NO. 34 – PAGE 136**

**G. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH TAYLOR & MURPHY CONSTRUCTION CO. INC. FOR THE EAST OAKVIEW ROAD BRIDGE REPLACEMENT PROJECT**

**BUDGET AMENDMENT FOR THE EAST OAKVIEW ROAD BRIDGE REPLACEMENT PROJECT**

This item was removed from the Consent Agenda due to a conflict of interest by Councilwoman Manheimer.

**H. RESOLUTION NO. 11-174 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER WITH PATTON CONSTRUCTION GROUP LLC, FOR THE VIEWMONT ACRES WATER SYSTEM EXTENSION PROJECT**

Review: The consideration of a resolution authorizing the City Manager to execute a change order in the amount of $4,484.35 to increase the construction contract for Patton Construction Group, LLC, from $318,363.24 to $322,847.59 for the Viewmont Acres Water System Extension Project.

On June 8, 2010, City Council awarded the construction contract to Patton Construction Group, LLC, for the Viewmont Acres Water System Extension Project. The City of Asheville has received a grant from NCDENR to replace the existing, private, failing water system at the Viewmont Acres Mobile Home Park. Upon completion of the water system improvements project, the City of Asheville will own and maintain this new water system. The project consists of the construction and installation of approximately 2,850 linear feet of a new 8-inch waterline, fire hydrants, valves, and other appurtenances as well as the installation of five (5) private residential booster pump stations.

An initial change order #1 was needed to increase the contract amount by an additional $23,413.24 for a total contract amount of $318,363.24 because of overruns to the original quantities estimated and to cover changes to the scope of the work, which were requested

through work change directives issued by the Water Resources Department. In order to complete the construction and close out the project, a second change order is needed to increase the contract amount by an additional $4,484.35 for a total contract amount of $322,847.59 to cover additional changes to the scope of the work as requested through work change directives issued by the Water Resources Department. There is sufficient budget within this project to fund the needed change order, so no budget amendment is required.

This project is part of City Council's strategic plans to improve city infrastructure.

Pros:

- Approval of the change order will allow the city to complete construction of the water system and close out the project, which will provide twenty-three (23) customers with a safe reliable drinking water source and much improved fire protection.
- The contract amount is fully reimbursable by the committed grant money, including the change order amount.

Con:

- If the change order is not approved, it would lead to forfeiture of part of the NCDENR grant funds and the existing failing private water system would not be upgraded.

The Water Resources Department will initially fund the construction cost of $322,847.59 (includes the change order amount) for this project until full reimbursement is received from the State. Funds for these upfront costs are already included in the Water Resource's Capital Improvement Program budget. Cost summary until reimbursement:

| | |
|---|---|
| Viewmont Acres Construction Budget | $582,171.00 |
| Original Construction Amount | $294,950.00 |
| Amount in Const. Budget Before Changes | $287,221.00 |
| Change Order Amount 1 | $ 23,413.24 |
| Change Order Amount 2 | $ 4,484.35 |
| Amount Remaining After Change Order | $ **259,323.41** |

After the project is completed and closed out, the remaining funds will be returned to the Water Resource's Capital Reserve Fund for reallocation to a current or future capital project. Staff will seek Council approval on any future reallocation of these funds.

City staff recommends City Council approval of the resolution authorizing the City Manager to execute a change order in the amount of $4,484.35 to increase the construction contract for Patton Construction Group, LLC, from $318,363.24 to $322,847.59 for the Viewmont Acres Water System Extension Project.

**RESOLUTION BOOK NO. 34 – PAGE 138**

**I. RESOLUTION NO. 11-175 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH DR. PAUL MARTIN MD FOR PHYSICIAN SERVICES PROVIDED THROUGH THE CITY'S HEALTH SERVICES DIVISION**

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement for physician services provided through the City's Health Services division.

In January 1995, Council authorized the City Manager to enter into an agreement for part-time physician services in the Health Services division. Dr. Paul Martin entered into a contractual agreement with the City of Asheville to provide three clinic days to City employees and their families. These clinic days have been very successful for Health Services.

This action complies with the Fiscal Responsibility prong of the City of Asheville's Strategic Operating Plan for 2010-11. By offering city employees clinic hours and complimentary health services for non-critical issues, Heath Care funds are saved in unnecessary doctor and emergency room visits, maintaining the city's long term financial commitment to high levels of fiscal responsibility.

Pros:

- The Health Services Clinic and Health Services Satellite Clinic provides on-site care for non-critical health needs
- Onsite care and services for employees saves the City of Asheville money in expenses that are not paid in unnecessary doctor and emergency room visits
- Dr. Martin is a trusted member of the Health Services staff team

Con:

- There are no foreseen cons for these services

This is a one year $120,000 contract, and funds have been budgeted and will be encumbered from the Health Care Fund to cover the cost of this contract.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign an agreement for physician services with Dr. Paul Martin, MD to continue to provide physician services to employees and their families.

**RESOLUTION BOOK NO. 34 – PAGE 139**

**J. RESOLUTION NO. 11-176 - RESOLUTION AUTHORIZING CONVEYANCE OF EASEMENT TO PROGRESS ENERGY ACROSS CITY RIGHT-OF-WAY ON RIVERVIEW CHURCH ROAD**

Summary: The consideration of a resolution authorizing Progress Energy to cross a City right of way, with an electric service line

Progress Energy Carolinas, Inc. (herein "PEC"), needs to relocate an electric service line to a residence on Riverview Church Road, out near Richmond Hill Park. In order to do this with the least amount of disruption, and to get the service line off of the actual travelled road, PEC proposes to extend the line from an existing pole on private property and cross the City's right of way to the service point.

The City does not own the fee interest in the property, but has a right of way acquired back in 1951. Primary access to Richmond Hill is from Richmond Hill Drive, on the other side of the park. A field inspection indicates that the right of way in question is not improved, is heavily forested, and in no obvious use. The proposed use by PEC would not interfere with any current use by the City. Provided the line is installed to a sufficient height, it would not interfere with any use that the City is able to make of the right of way. This condition can be incorporated in the instrument of conveyance.

This action complies with the City's plans in that it removes a segment of power line from the travelled portion of a public right of way.

Pro:

- Will marginally improve public safety.

Con:

- Will cross the City's (unused) right of way

Adoption of the resolution is recommended.

**RESOLUTION BOOK NO. 34 – PAGE 140**

**K. RESOLUTION NO. 11-177 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDED CONTRACT WITH KIMLEY-HORN AND ASSOCIATES INC. TO PROVIDE ADDITIONAL CONSTRUCTION INSPECTION/MANAGEMENT SERVICES FOR THE PARKING GARAGE AT 51 BILTMORE AVENUE**

Summary: The consideration of a resolution authorizing the City Manager to execute an amended contract with Kimley-Horn and Associates, Inc. in the amount of $175,000 to provide additional construction inspection/management services for the parking garage at 51 Biltmore Avenue.

The City of Asheville contracted with Kimley-Horn and Associates, Inc., in the amount of $42,000 to evaluate the feasibility of constructing a parking garage at 51 Biltmore Avenue in July 2008. In October 2008, the City amended the contract to include design review, value engineering and construction inspection/management of the project. The approved amendment was in the amount of $215,000 for a total contract amount of $257,000. The total amount of the contract including this increase would be $432,000.

Staff is recommending an additional amendment in the amount of $175,000 for the following purposes:

1. The original contract did not account for the lag in the design period and the start of construction. During this period of time, Kimley Horn provided services necessary to secure the financing of the project.
2. The contract with Kellogg and Kimsey, Inc. (the contractor) provides for the release of the 5% retainage of several items in the contract at the completion of that item, as opposed to the final completion. The purpose for releasing the retainage sooner was to get better pricing from the sub-contractors on these items. In efforts to make sure these items were constructed in accordance with the design, we requested Kimley-Horn provide weekly site inspections as opposed to monthly inspections as stated in the original contract. We also asked them to provide additional oversight as needed to sign off on each pay application request.
3. We have requested that Kimley-Horn provide a formal maintenance plan for the parking garage to increase the life of the garage and reduce major maintenance costs.

This action complies with the City Council Strategic Operating Plan in Job Growth and Community Development by supporting a dynamic and robust local economy with balanced and sustainable growth. This project also complies with the City's Parking Action Plan.

Pros:

- Insures that proper oversight and inspection is performed by qualified professionals and in the best interest of the City.
- Reduces liability in releasing the retainage on the project.
- Documented maintenance plan provides for the extended life of the parking facility.

Con:

- Additional cost of $175,000.

The parking garage portion of the project is approximately 35% complete. We have paid $2.6 million of the $7.5 million contract amount. To date we have approved $12,000 in change

orders (less than 0.2%). The budget includes a 10% contingency as part of the project cost. This increase will reduce the amount of contingency from $738,000 to $563,000. We do not anticipate any significant change orders on this project. This amendment will not increase the budget for the entire project.

Staff recommends that City Council authorize the City Manager to execute an amended contract with Kimley-Horn and Associates, Inc. in the amount of $175,000 to provide additional construction inspection/management services for the parking garage at 51 Biltmore Avenue.

**RESOLUTION BOOK NO. 34 – PAGE 142**

**L. RESOLUTION NO. 11-178 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDED CONTRACT WITH AMEC (PREVIOUSLY MACTEC) TO PROVIDE SPECIAL INSPECTION AND CONSTRUCTION MATERIALS TESTING FOR THE PARKING GARAGE AT 51 BILTMORE AVENUE**

Summary: The consideration of a resolution authorizing the City Manager to execute an amended contract with AMEC (previously MACTEC) in the amount of $27,500 to provide additional special inspection and construction materials testing for the parking garage at 51 Biltmore Avenue.

The City of Asheville contracted with AMEC (formally MACTEC) in the amount of $46,000 to perform special geotechnical and material inspections as well as testing. Since that time, we have encountered some issues on the site that have increased the need for additional geotechnical testing and inspections. These issues include additional fill material on the site that required additional excavation. Additional testing had to be performed to make sure the sub-surface was compacted. In the same vain, the soil wall had to be extended. This required additional soil nail installation and inspection. Finally, due to the compressed schedule of the project, more overtime hours are required to perform these inspections. Some of these overtime cost will be reimbursed by the contractor in a change order deduct. The total amount of the contract including this increase would be $73,500.

This action complies with the City Council Strategic Operating Plan in Job Growth and Community Development by supporting a dynamic and robust local economy with balanced and sustainable growth. This project also complies with the City's Parking Action Plan.

Pros:

- Insures that proper oversight, inspection and testing are performed by qualified professionals and in the best interest of the City.
- Reduces liability in releasing the retainage on the project.

Con:

- Additional cost of $27,500.

The parking garage portion of the project is approximately 35% complete. We have paid $2.6 million of the $7.5 million contract amount. To date we have approved $12,000 in change orders (less than 0.2%). The budget includes a 10% contingency as part of the project cost. The increase in the Kimley-Horn amendment will reduce the amount of contingency to $563,000. This amendment will decrease the contingency to $535,500. We do not anticipate any significant change orders on this project. This amendment will not increase the budget for the entire project.

Staff recommends City Council authorize the City Manager to execute an amended contract with AMEC (previously MACTEC) in the amount of $27,500 to provide additional special inspection and construction materials testing for the parking garage at 51 Biltmore Avenue.

**RESOLUTION BOOK NO. 34 – PAGE 143**

**M. RESOLUTION NO. 11-178 - RESOLUTION SUPPORTING SUBMISSION OF THE HUD SUSTAINABLE COMMUNITY CHALLENGE PLANNING GRANT**

Summary: The consideration of a resolution that the City of Asheville submit an application for the HUD Sustainable Community Challenge Planning Grant in the amount not to exceed $3 million.

HUD just announced a second year of availability of *Sustainable Community Challenge Planning Grants.* These grants are available for local efforts that "foster reform and reduce barriers to achieving affordable, economically vital and sustainable communities." HUD funds of $28.6 million are available this year. Unlike last year, when HUD and DOT combined their grant programs in one application round, this is a HUD opportunity only. The City was awarded $850,000 from the DOT TIGER II pool of funds last year. Our proposed application this year would build on the activities funded by DOT in the East of the Riverway, with special emphasis on those activities not funded, although proposed, in last year's competition.

The East of the Riverway target area is roughly bounded by the French Broad River to the west, Patton Avenue (but including Hillcrest) to the north, the CBD and McDowell Street to the east and the Swannanoa River to the south. We propose adding the Lee Walker Heights public housing community to the target area, to actively support the City's collaboration with the Housing Authority in their Choice Neighborhoods grant application.

Like last year, the proposed project outcomes are to complete pre-development activities that will lead to an increase in the supply and diversity of housing in that area, and to create new economic opportunities and job creation in the target area. The goal is to advance projects to the point of being "shovel ready."

Specific activities to be proposed this may include:

- Create "form-based" zoning for the area;
- Building on the Energy Plan to be developed using TIGER II funds, support the advancement of legislation or other governmental rules that will enable Asheville to employ public financing tools to achieve large scale community participation in energy conservation and alternative energy. Examples of tools needing enablement include PACE and Energy Utility creation.
- Fund land purchases for affordable housing development in the City's East of the Riverway area; this is the only "implementation" activity that is an eligible use for Challenge Grant funding;
- Support planning for increased sustainable economic development, including market analysis, business plan development, entrepreneurial training and other activities to increase neighborhood commercial activity, support for the arts-based economy and the provision of healthy food products in the target area;
- Continue to Involve the community- especially residents, property owners and businesses operators in the area- in determining the direction of development there;
- Continue to support a broadly representative and effective partnership to perform the work under the grant, including City departments, non-profit organizations, the Riverfront Redevelopment Commission, Housing Authority and others

The Housing and Community Development Committee will review this recommendation at their August 22 meeting.

This opportunity will support the following goals and objectives of Council's Strategic Plan: (1) Affordable: this project will (a) Help create and preserve affordable housing by creating UDO and other code reforms to encourage and align affordable housing with access to transit; (b) Explore opportunities for public/private partnerships and innovative financing for affordable housing; and (c) Support the Housing Authority to pursue redevelopment of public housing; (2) Fiscal Responsibility: This project will explore alternatives for master plan implementation and position the City to proactively seek funding opportunities for infrastructure maintenance and capital improvements; (3) Green, Sustainable: This project will create opportunities to work with regional partners to create incentives for green building, energy conservation and energy independence; and (4) Job Growth and Community development: This project will (a) Expand partnerships in economic development around common goals of sustainable economic development; and (b) Support local and regional Sustainable Community Initiatives and seek investments in target areas, such as the East of the Riverway.

Pros:

- This grant seeks funding for already articulated community needs that were not funded initially;
- The practical partnership being formed will lead to projects that are comprehensive and coordinated;
- Targeting the East of the Riverway area will lead to "transformational investment" that will create new opportunities for people already living there, as well as incentivize new housing and economic development that will spur the sustainable reuse of existing property, including property now owned by the City;
- This grant will support the activities of the Riverfront Redevelopment Commission to further sustainable economic activity;
- The opportunity to fund the acquisition of land for future affordable housing development will enhance the ability of our partners to plan development that will be accessible to jobs, training and services, and for the City to plan for the efficient use of its resources to support that development.

Cons:

- Although the nature of this grant lends itself to a targeted focus, targeting one area of the City may cause concern that other City areas are not being treated fairly;
- New resources can create expectations of immediate future funding; although HUD and other agencies have implied that this funding will be available, it will depend on the federal (and state and local) budget processes and constraints;
- New development brings inherent conflicts between competing interests. The success of any planning activity will be the ability to create win-win relationships.

The City must provide evidence of commitment of 20% matching funds. Some federal funds are eligible (such as CDBG and HOME); in-kind contributions are also eligible. Staff is confident that the proposed activities either already have sufficient matching commitments from other federal funds or staff, or that the match will be provided by project partners who originally committed their leverage to the last year's application. No new funding is requested from the City to meet these match requirements.

Because no new funding is requested from the City, and existing City staff are preparing the application, there is no immediate fiscal impact. If awarded, the City will assess the benefit and impact of accepting funding. We expect the City to be better positioned to leverage future state and federal funding, especially in very competitive funding environments.

Staff recommends making application for funding as described above.

**RESOLUTION BOOK NO. 34 – PAGE 144**

**N. ORDINANCE NO. 4000 - TECHNICAL BUDGET AMENDMENT TO SUPPORT THE HIRING OF AN ADDITIONAL CUSTOMER SERVICES REPRESENTATIVE POSITION**

Summary: The consideration of a technical budget amendment in the Water Resources Fund in the amount of $45,000 for funds being transferred from the Stormwater Fund to support the hiring of an additional Customer Services Representative position.

Beginning with the start of the 2011-12 fiscal year, stormwater charges are now included on the bi-monthly water utility bills. As such, staff anticipated an increase in the volume of stormwater-related customer service inquiries and issues. To accommodate this additional workload, funding of $45,000 was included in the adopted FY 2011-12 budget in the Stormwater Fund to pay for additional staffing in the Customer Services Division of Water Resources. Even though this expenditure was included in the Stormwater Fund adopted budget, the transfer could not be completed until the budget became effective and thus was not included in the Water Resources Fund budget. The additional Customer Services Representative (CSR) position was not requested until the funds were available. This technical amendment will correct that oversight. The full-time employee (FTE) position count in the Customer Services Division will also be adjusted from 22 to 23.

This project is part of City Council's strategic plan to provide excellent service and to operate at the highest levels of fiscal responsibility.

Pros:

- Establishes correct revenue and expenditure budgets in the Water Resources Fund.
- Allows for the addition of one FTE in Customer Services to help cover the call volume and reduce call wait times for customers.

Con:

- None.

As noted above, the $45,000 in funding is already included in the adopted FY 2011-12 Stormwater Fund budget; therefore there is no fiscal impact to this action.

City staff recommends City Council adopt a technical budget amendment in the Water Resources Fund in the amount of $45,000 for funds being transferred from the Stormwater Fund to support the hiring of an additional Customer Services Representative position.

**ORDINANCE BOOK NO. 27 – PAGE 110**

**O. ORDINANCE NO. 4001 - TECHNICAL BUDGET AMENDMENT AFFECTING ONE OF THE CITY'S SPECIAL REVENUE FUNDS, THE GENERAL CAPITAL PROJECTS FUND AND THE STORMWATER CAPITAL PROJECTS FUND**

Summary: The consideration of a technical budget amendment affecting one of the City's Special Revenue Funds, the General Capital Projects Fund and the Stormwater Capital Projects Fund in the amount of $5,612,369, $5,157,869 and $454,500, respectively.

The Governmental Accounting Standards Board (GASB) is the independent organization that establishes and improves standards of accounting and financial reporting for U.S. state and local governments. The GASB has issued a new statement, GASB 54 that has revised the governmental fund type definitions. Statement 54 makes clear that, for financial reporting purposes, a special revenue fund may only be established around one or more revenue sources

that are restricted or committed to purposes other than capital projects or debt service. In order to comply with this statement's new fund definitions, the City needs to move several special revenue projects out of the Grants Program Special Revenue Fund into either the General Capital Projects Fund or the Stormwater Capital Projects Fund because the projects are principally capital in nature or are funded from unrestricted revenue sources.

Currently and for years the City has correctly reported some capital projects in the Grants Program Special Revenue Fund largely due to the fact that the majority of the projects were to be funded by special and/or restricted revenue sources. With the new GASB 54 special revenue fund definition, the ability to continue this practice has been eliminated. In order to comply with the new standard, the City will need to move some of these projects out of the Grants Program Special Revenue Fund and into the more appropriate funds.

The FY11 budget amendment identifies the aforementioned projects contained in the Grants Program Special Revenue Fund which require realignment into either the General Capital Projects Fund or the Stormwater Capital Projects Fund.

This action complies with the City Council Strategic Operating Plan goal of "Operate the City of Asheville to the highest levels of fiscal responsibility."

Pro:

- Compliance with GASB 54

Con:

- None.

There is no fiscal impact; project budgets that have been previously approved by City Council are simply being moved from the Special Revenue Fund into either the General Capital Projects Fund or the Stormwater Capital Projects Fund. Since this amendment will affect the overall budgets in each fund, meaning the amendment crosses funds, City Council's approval is required.

City staff recommends City Council adopt the technical budget amendment affecting the City's Grants Program Special Revenue Fund, the General Capital Projects Fund and the Stormwater Capital Projects Fund in the amount of $5,612,369, $5,157,869 and $454,500, respectively.

**ORDINANCE BOOK NO. 27 – PAGE 112**

**P. ORDINANCE NO. 4002 - BUDGET AMENDMENT FOR THE BLACK MOUNTAIN TRAILBLAZER PROJECT, OPERATED BY MOUNTAIN MOBILITY**

Summary: The consideration of a budget amendment, in the amount of $96,881, from the Federal Transit Administration, to set up the project budget for the Job Access and Reverse Commute project Black Mountain Trailblazer, operated by Mountain Mobility, and the City's administrative costs.

The City of Asheville is the designated recipient of the Job Access and Reverse Commute (JARC) funds, a program of the Federal Transit Administration (FTA). JARC is a formula grant program oriented to provide job access in the urbanized and suburbanized area. The formula is based on the number of eligible low-income and welfare recipients in these areas.

The job access refers to projects relating to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment.

The reverse commute refers to a public transportation project designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities.

To be eligible, the program requires an intensive planning process and the development of a Coordinated Public Transportation and Human Services Transportation Plan or CTP-HSTP based on community participation. The CTP-HSTP was developed in conjunction with the French Broad Metropolitan Planning Organization, Buncombe, Henderson and Haywood Counties, human services agencies, public and private transportation providers, NCDOT and general public to assess current transportation needs, identifies gaps and sets goals. The plan was adopted on April 17, 2008 by the French Broad River MPO's governing body, the Transportation Advisory Committee (TAC), which is made up of elected representatives from each of the eighteen local governments which make up the MPO. They include Buncombe, Haywood, and Henderson County, and each of the incorporated municipalities in the three counties. The CTP-HSTP set the rules to apply for projects and the projects are selected in a competitive process that is approved by the TAC.

In January 2011 Buncombe County's Mountain Mobility was selected as subrecipient of the JARC funding and received $73,449 in JARC funds to operate the Black Mountain Trailblazer. The funding will pay for two years of operation, beginning in January 2011 and ending in December 2012. The city needs to set up a project budget in order to pass through the funds and will seek reimbursement directly from the FTA. This funding covers 50% of operations, the other 50% is provided by Buncombe County as local match.

The City will be responsible for the Program Management and, as designated recipient, to oversee the utilization of these funds according to FTA regulations. The program management will require the use of city resources, mainly staff. As a designated recipient the city will use additional $23,432 of JARC funds for administration purposes, which will cover the program management expenses for a period of two years.

This action complies with the City Council Strategic Operating Plan by supporting the fiscal responsibility focus area, specifically operating the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- Project funding is provided by the FTA (50%) and Buncombe County provides the local match (50%).
- The city can use $23,432 for administration purposes.

Con:

- The project cost is $73,449 and the city will seek reimbursement from FTA.

The total financial impact for the subject project is $96,881 and it will be funded with Federal Funds. $23,432 will be reimbursed to the city for administrative costs.

Staff recommends that City Council adopt a budget ordinance amendment in the amount of $96,881 from Federal Funds to set up the project budget for Job Access and Reverse Commute project, the Black Mountain Trailblazer operated by Mountain Mobility and the administrative costs.

**ORDINANCE BOOK NO. 27 – PAGE 122**

**Q. ORDINANCE NO. 4003 - BUDGET AMENDMENT FROM THE NORTH CAROLINA ARTS COUNCIL**

Summary: The consideration of a budget amendment, in the amount of $49,850, for the North Carolina Arts Council Grassroots Arts Program Grant.

The North Carolina Arts Council operates the Grassroots Arts Program Grant that provides per capita-based funding for arts programming to all 100 counties across North Carolina ensuring opportunities for citizens to experience the arts in their own communities. In counties without Designated County Partners, the North Carolina Arts Council invites an organization to serve as a Provisional County Partner in order to manage the distribution of Grassroots funds.

The City of Asheville Parks, Recreation and Cultural Arts Department will annually serve as the Provisional County Partner to manage the distribution of Grassroots Arts Program funds as approved by the North Carolina Arts Council. The funds will be awarded to eligible organizations in Asheville and Buncombe County who will then provide community art programs. Per grant guidelines, the City may retain 10% of the grant funds to support administrative cost associated with the grant program.

The action complies with the City Council Strategic Plan in that is creates more collaborative and effective working partnerships between the City of Asheville, the business community, and other key organizations to effectively manage the city's regulatory environment while accomplishing economic development goals and fiscal responsibility of exploring alternative for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities. The action also complies with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it enhances public confidence for and appreciation of the arts, and enhance facilitation and resources among arts interests.

Pro:
- Provides additional funds to support the arts in Asheville and Buncombe County

Con:
- None

The $49,850 grant from the North Carolina Arts Council Grassroots Arts Program will be received by the City and passed on to the designated sub grantees. The grant will be budgeted in the General Fund.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to establish a budget of $49,850 for a grant from the North Carolina Arts Council Grassroots Arts Program Grant.

Superintendent of Cultural Arts Diane Ruggiero responded to Councilman Smith regarding how the City will utilize their partnership with the Asheville Area Arts Council in administering this grant.

**ORDINANCE BOOK NO. 27 - PAGE 124**

**R. ORDINANCE NO. 4004 - BUDGET AMENDMENT FOR THE 4TH & FINAL YEAR OF FUNDING FROM THE N.C. DEPT. OF PUBLIC INSTRUCTION FOR THE 21ST CENTURY COMMUNITY LEARNING CENTER S WHICH WILL OCCUR AT REID COMMUNITY CENTER**

Summary: The consideration of a budget amendment in the Grant Fund, in the amount of $78,000, for the fourth and final year of funding from the N.C. Dept. of Public Instruction for the City of Asheville 21st Century Community Learning Center which supports the West Riverside Operation Weed and Seed Initiative.

In October 2004, elected officials, city staff and Asheville citizens mobilized to develop comprehensive strategies to address crime, neighborhood restoration, and

prevention/intervention/treatment programs and activities in the West Riverside area of Asheville as part of a Weed and Seed initiative. The program was introduced to the community via a series of public meetings to determine the concerns of residents living in the targeted area and was received favorably with the understanding that residents would be integrally involved in the planning and implementation of the initiative. In July 2006, the U.S. Department of Justice announced the designation of Asheville as an "Officially Recognized" site for the federal Weed and Seed initiative which focuses on reducing crime and improving quality of life in neighborhoods experiencing high crime.

Weed & Seed sites are required to leverage additional funds to carry out goals and objectives of the initiative. The 21st Century Community Learning Center grant directly relates to the Weed & Seed prevention/intervention/treatment strategy and provides funds for afterschool programs serving Asheville High and Asheville Middle students who are academically at risk. Community-identified goals such as increased parent involvement in education and afterschool activities and increased community input on programming are addressed through the program.

Programs will take place at the Reid Community Center and will be part of the IRL (In Real Life) network of programs functioning out of Asheville Middle School. During the 2010/2011 school year, the City of Asheville 21st CCLC program served 211 middle and high school youth with a majority of students (178) attending Asheville Middle School. Youth living in the Weed & Seed designated area made up 16 percent of participants.

During the 2009/2010 school year, the City of Asheville 21st CCLC program served 161 middle and high school youth with a majority of students (121) attending Asheville Middle School. During this year, 13 percent of participants lived in the Weed & Seed designated area.

Opportunities for increased positive interactions between law enforcement officers and program participants continue to grow with 12 contact hours per week budgeted for the proposed grant cycle.

This action complies with the City Council Strategic Operating Plan in that it implements a strategy to significantly improve public safety in neighborhoods in Asheville with the highest levels of crime and supports recreation and employment alternatives for youth at risk of gang exposure. This action also complies with the community-based Weed & Seed goals of 1) reducing crime and improving public safety, 2) enhancing the relationship between the community and law enforcement, 3) providing accessible programs for youth, 4) increasing parent involvement in education and afterschool activities and 5) increasing job readiness among youth and adults.

Pros:

- Continued funding will bring much needed academic assistance to middle school students who are struggling in school and/or reside in high risk neighborhoods.
- Program works with community resources to affect change.
- Program will enhance the Weed & Seed strategy of providing a comprehensive crime prevention plan to address law enforcement, neighborhood restoration and prevention/intervention/treatment programs for residents of the targeted area.
- Partnering agencies are committed to sustaining the vision of the City of Asheville 21st CCLC program through current programming and the continuation of trust building opportunities between youth and law enforcement officers.

Con:

- The City of Asheville will have little control over the financial resources for the program in the 2012-2013 school year since the 4-year funding cycle will have come to an end.

Grant revenue in the amount of $78,000 will cover all personnel and operating expenses related to the afterschool program at no additional cost to the City. Expenses include, but are not limited to: salary for a full time program director, part-time site assistant, APD overtime, contracted site management agency, contracted teachers, and supply costs.

City staff recommends City Council adopt a budget amendment in the Grant Fund, in the amount of $78,000, to establish a budget for the 21st Century Community Learning Centers which will occur at Reid Community Center.

**ORDINANCE BOOK NO. 27 – PAGE 126**

**S. RESOLUTION NO. 11-182 – RESOLUTION TO RESCIND RESOLUTION NO. 11-151 DUE TO AN ACCOUNTING ERROR IN THE BID DOCUMENTS AND TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SPL INTEGRATED SOLUTIONS FOR THE REVISED AND CORRECTED AMOUNT OF THE NEW SOUND REINFORCEMENT SYSTEM PROJECT IN THE CIVIC CENTER ARENA**

Summary: The consideration to rescind Resolution No. 11-151, approved on August 9, 2011, and issue a new resolution authorizing the City Manager to enter into a revised contract with SPL Integrated Solutions (AVI-SPL, Inc), in the amount of $ 418,461.03 for the installation of a new Sound Reinforcement System in the Asheville Civic Center arena.

On August 9, 2011, City Council adopted a resolution authorizing the City Manager to enter into a contract with SPL Integrated Solutions, in the amount of $368,233.71. After a review of the originally submitted bid the Contractor discovered an accounting error ($50,227.32) that neglected to properly add all of the Equipment Costs correctly. After a careful review by the contractor and staff it was determined that the contractor is still the lowest responsible bidder and meets the criteria of the contract.

The following bids were received:

| | |
|---|---|
| SPL Integrated Solutions, Columbia, MD | $418,461.03 |
| Musicraft Inc., Roebuck, SC | $425,675.00 |
| Daktronics Inc., Ossian, IN | $497,680.00 |

This change still falls within the projected budget and does not create any issues with the funding of the project.

This action complies with the City Council Strategic Operating Plan's Fiscal Responsibility goal of developing strategic partnerships to leverage resources for infrastructure and CIP projects. This action also complies with the Civic Center Commission Master Plan that encourages continuing renovations for the facility, and supports the goal of developing new partnerships. It has been reviewed and recommended by the Civic Center Commission.

Pros:

- Project allows replacement of an obsolete sound system.
- New sound system will create a much clearer sound experience during events.
- Project bid is below budget.

Con:

- None noted.

Funding for this contract is included in the Civic Center Capital Fund as part of the budget for the Southern Conference renovations.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with SPL Integrated Solutions (AVI-SPL, Inc), for $418,461.03 for the installation of new sound reinforcement system in the Asheville Civic Center arena and concourse.

**RESOLUTION BOOK NO. 34 – PAGE 147**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Russell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

**ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

**G. RESOLUTION NO. 11-173 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH TAYLOR & MURPHY CONSTRUCTION CO. INC. FOR THE EAST OAKVIEW ROAD BRIDGE REPLACEMENT PROJECT**

**ORDINANCE NO. 3999 - BUDGET AMENDMENT FOR THE EAST OAKVIEW ROAD BRIDGE REPLACEMENT PROJECT**

Councilman Russell moved to recuse Councilwoman Manheimer from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously.

Summary: The consideration of a resolution authorizing the City Manager to execute on behalf of the City of Asheville a contract and any change order within the budgeted amount with Taylor & Murphy Construction Co., Inc. for the project known as East Oakview Road Bridge Replacement, TIP# B-4343; and a budget amendment in the amount of $325,000 with 80% of the needed funds ($260,000) coming from the N.C. Dept. of Transportation and 20% ($65,000) coming from the City's General Fund.

A formal request for bids was issued on June 27, 2011, and bids were opened on July 27, 2011. Taylor & Murphy Construction Co., Inc., a local company, was the low bidder at $1,142,616.20. This bid was squarely in line with our Engineer's Estimate of $1,249,486.96. The disadvantaged business enterprise goal of 8% was met with 8.07%. The City will be able to invoice the N.C. Dept. of Transportation (NCDOT) monthly for reimbursement of payments made to the contractor. This is a unit price contract and not a lump sum contract.

The East Oakview Road bridge collapsed in 2001, leaving residents of that neighborhood stranded. A gravel temporary access road was constructed from a nearby highway on/off ramp until NCDOT was able to loan the City a Bailey bridge to use as a temporary means of crossing Hominy creek. That borrowed bridge has been in service ever since. The City has obtained a grant from NCDOT and the Federal Highway Administration through the Municipal Bridge Program. The City will be required to pay 20% of the project cost and the grant will pay the remaining 80%. One of the City's inspectors will be on-site for the duration of the project and will receive valuable training from NCDOT employees. The City will be able to be reimbursed for the salary of City inspector working on the project. This new bridge, and the included sidewalk across it, will be a permanent solution for the citizens living on East Oakview Road.

The budget for the East Oakview Bridge project, which was initially adopted in FY 2004-05 is currently $1,363,000. Approximately $340,000 has been spent to date on design and right of way acquisition; leaving $1,022,000 in available budget to complete the project. In order to be able to award the contract and include funding for a 15% contingency, the project budget needs to be increased by $325,000. As mentioned above, the City is required to pay 20% of the project

cost and NCDOT pays the remaining 80%. Therefore, $260,000 of the additional funding needed for this project will come from NCDOT, with the City responsible for the remaining $65,000. The City's $65,000 share will come from funding that was approved in the FY 2011-12 budget for street resurfacing and repair.

This action complies with the City Council Strategic Operating Plan in fully leveraging funding from the State and other sources for regional transportation improvements.

Pros:

- Provides long term investment in the City's infrastructure.
- Permanent solution to a decade old problem
- 80% funded by NCDOT.
- City inspector will receive valuable training and salary funded by project grant.
- New sidewalk across structure.

Cons:

- The City will be responsible for future maintenance of the project.
- Project management and contract administration will consume staff time.
- 20% match ($65,000) needed for the budget amendment will come from City street maintenance funding.

The $325,000 budget amendment will increase the total budget for the East Oakview Bridge project to $1,688,000. 20% of the project budget ($337,600) is funded with City money, and 80% of the project budget ($1,350,400) is funded with an NCDOT grant. As noted above, the additional $65,000 in City funding needed for the current budget amendment will be taken from funding that was included in the adopted FY 2011-12 Public Works budget for street resurfacing.

City staff recommends City Council adopt the resolution awarding the contract to Taylor & Murphy Construction Co., Inc. and authorizing the City Manager to execute on behalf of the City of Asheville the contract and any change order within the budgeted amount; and the accompanying budget amendment

Councilman Russell moved for the adoption of Resolution No. 11-173. This motion was seconded by Councilman Bothwell and carried unanimously (with Councilwoman Manheimer being recused).

**RESOLUTION BOOK NO. 34 – PAGE 137**

Councilman Russell moved for the adoption of Ordinance No. 3999. This motion was seconded by Councilman Bothwell and carried unanimously (with Councilwoman Manheimer being recused).

**ORDINANCE NO. 27 - PAGE 108**

**III. PRESENTATIONS & REPORTS:**

**A. ADVANTAGEWEST ECONOMIC DEVELOPMENT UPDATE**

Mr. Scott Hamilton, President and CEO of AdvantageWest, updated City Council on AdvantageWest's 2010 programmatic activity on five core program areas (1) advanced manufacturing; (2) entrepreneurial development; (3) AdvantageGreen; and the (4) WNC Film Commission. He said all these accomplishments mean that our region is growing economically and our efforts are making a difference. They are committed to using all our resources, ingenuity and time to build business and create and retain jobs throughout our entire 23-county region.

Mayor Bellamy thanked Mr. Hamilton for their partnership with the City.

In response to Councilman Smith, Mr. Hamilton explained that regarding locally grown food, there are a lot of opportunities and they will continue to look at innovative ways the Blue Ridge Food Ventures can support and diversify the agricultural economy.

Mayor Bellamy noted that AdvantageWest is also addressing food security.

In response to Mayor Bellamy, Mr. Hamilton said that you can subscribe to the Winter Sun Farms CSA up to the first of December at AdvantageWest.com.

**B. QUARTERLY REPORTS**

**Finance Committee**

Councilman Russell, Chairman of the Finance Committee, updated Council on some major accomplishments during the first quarter of FY 2012. Below is a bulleted list that highlights some of the committee's accomplishments during that time: (1) During the FY 2012 budget adoption, City Council recommended that the Finance Committee review the adopted water rate structure and its impact on large manufacturers as well as the possibility of creating a manufacturing customer class. The committee began its discussion on this item on July 12. As a first step in an overall feasibility analysis, the committee directed staff to produce a financial analysis illustrating the financial impact an alternative rate for a manufacturing customer class would have on overall revenue projections. The finance committee further discussed the importance defining a "manufacturing class." The committee asked staff to report back to the committee in early October. The committee expects to bring forward its analysis and any recommendations to City Council by the end of the calendar year; (2) Staff provided the first FY 2011 audit update to the Finance Committee at the July meeting. During that presentation, staff provided the committee with a general overview of the financial audit process as well as an update on progress with the FY 2011 audit and preparation of financial statements. Feedback from the accounting firm, Dixon Hughes, has been positive so far. The lead accountant from Dixon Hughes will be at the Finance Committee meetings in August, September and October. The audit is scheduled to be presented to City Council on November 22, 2011; (3) The committee has reviewed Asheville's FY 2012 debt issuance schedule, which will combine the permanent financing for 51 Biltmore Avenue garage, the refinancing of the some existing debt, and the issuance of new debt for capital projects approved with the fiscal year 2012 budget. The Reimbursement Resolution, which provided for expenditure reimbursements to the City prior to the actual debt issuance, was approved by City Council at the July 26, 2011, meeting. It is anticipated that the debt will issued in the March 2012 timeframe; and (4) The deadline for community media development proposals was August 1, 2011, and the City received seven submissions. The joint city-county evaluation panel is currently reviewing proposals, and the Finance Committee will review results at its meeting in September. A final recommendation will be brought forward to City Council in at the second meeting in September or the first meeting in October.

Mayor Bellamy asked that when the Finance Committee reviews water rates that they consider a one-year out implementation date and that any increase not be on the City's fiscal year, but on a calendar year so people can plan for the increase. Councilman Russell said that he would be glad to add that to their discussion.

**Strategic Operating Plan**

Assistant City Manager Jeff Richardson said that the Asheville City Council identified short and long term goals at the January, 2010 strategic planning retreat and staff has continued to provide its quarterly updates on progress of the five key focus areas.

City Council asked City staff to provide quarterly updates on key strategic initiatives associated with the five primary focus areas of the City's Strategic Plan. Staff has tracked projects using performance indicators and measurements through the Fiscal Year 2010-11.

In addition, City Council has asked for an activity report on a quarterly basis of the Domestic Partner Registry. Since the Registry began on May 2, 2011, a total of 24 couples have registered.

Mr. Richardson then highlighted the major accomplishments for the end of the year focus areas of (1) Safe (A) review of the 2009 and 2010 Asheville Crime Index, compared to comparable cities; (B) track and monitor Nuisance Court progress; (C) significantly improve public safety in neighborhoods with the highest level of crime; and (D) maintain accreditation and the Asheville Fire and Rescue Department; (2) Affordable (A) enhance affordability of Asheville's Bus Pass Program; (B) implement reforms to Unified Development Ordinance to encourage affordable housing development; and (C) continued to provide funding for affordable housing through the Housing Trust Fund; (3) Green and Sustainability (A) implement new ways to reduce City-wide solid waste; (B) integrate and implement multi-modal transportation plan; (C) reduce the City's annual energy usage; and (D) expand community education programs; (4) Job Growth and Community Development (A) Development Services Center survey; (B) attract and retain quality employees; (C) enhance workforce diversity; (D) pursue models for re-formatting the Unified Development Ordinance; and (E) City of Asheville Youth Leadership Academy; (F) AT&T surface parking lot – 49 spaces; (G) Linamar Announcement; (H) Public Partnership with the UNC School of Pharmacy; and (I) Civic Center partnership with Tourism Development Authority, Buncombe County and ABC Board; and (5) Fiscal Responsibility (A) revenue stream diversification; (B) operate Asheville with the highest level of responsibility; (C) leverage/external partnerships for pursuing capital improvements and infrastructure projects; and (D) operate the City to the highest levels of fiscal responsibility.

Mr. Richardson responded to various questions/comments from Council, and for those which he could not readily answer, he said he would provide Council with that information. Some questions/comments were, but are not limited to: comparison of other cities Asheville's size in North Carolina on their turn-over rate; why did we pay for Budweiser wristbands for Bele Chere when there are so many local breweries; request for copy of PowerPoint given to the Airport Authority by Mr. Richardson and Fire Chief Scott Burnette; confirmation that if we had a joint fire station located at the Airport, all businesses in the City of Asheville would see a 2-5% decrease in their fire insurance premiums on a year to year basis, due to the potential ISO upgrade in 2013; and request to continue to improve the racial diversity so that our workforce mirrors our community.

Mayor Bellamy thanked the team members for the partnership with UNC-Asheville.

Councilman Davis also thanked key City staff for the partnerships in bringing the Southern Conference back to Asheville.

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT FOR SUNSET PARK, LOCATED AT 2 SUNSET DRIVE

### ORDINANCE NO. 4005 - ORDINANCE AMENDING A CONDITIONAL USE PERMIT FOR SUNSET PARK, LOCATED AT 2 SUNSET DRIVE

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast said that this process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

When City Attorney Oast asked if any Council member had special knowledge of the site, other than visiting the site, no one spoke.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:06 p.m.

Technical Review Manager Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of an amendment to the conditional use permit for Sunset Park, located at 2 Sunset Drive, for the reduction in the number of units from 19 to 17 and changes to the building design, elevations and footprints.

On February 27, 2007, City Council approved a Conditional Use permit with an "Exceptional Development Density Bonus for the construction of a 19 unit condominium project located at 2 Sunset Park Drive (Attachment to City Exhibit 3 – Site Plan). Four (4) of the units were to be sold at prices meeting the City's definition of affordability.

To date, two duplex units (Units 1-4) at the corner of Baird and Sunset Park and two single family structures (unit 8 and 11) have been constructed to meet Healthy Built certification standards. Each of the four units housed within the duplex structures are occupied and were sold at a price that met the City's Affordable housing rate at the time construction was completed. With the exception of grading for the future construction of foundation pads for the remaining units, all storm drainage, sewer, grading and disturbance on the site is complete.

In 2008, after the construction of the last single family dwelling was completed on site (unit 11), the property went into foreclosure. In March 2011, Chris Carson of AVL Associates assumed ownership of the property from the bank and is now returning to City Council to seek several minor site modifications to the master plan and is also proposing changes to the building elevations that were approved.

The following is a list of minor site plan changes that the applicant is requesting with this amendment request:

- A reduction in density from 19 units to 17 units
- A reduction in the total number of parking spaces for the development: from 36 spaces to 32 spaces
- The addition of an accessory structure for unit 12

- Provide for a mix of footprint sizes between 600 square feet and 1,250 square feet – some of these footprints are smaller than what the previous approval proposed.

As stated above, this amendment request also includes proposed changes to the approved building elevations; and it is the primary reason the application is returning for Council's consideration (Attachment to City Exhibit 3 - 2 samples of front elevation) (Attachment to City Exhibit 5 – sample of rear elevation). While the new design proposed by the applicant is very similar in style, the former application proposed a mix of moiore, slender "tree-house like" structures that were to be constructed with high quality building materials and included significant interior upgrades to produce a fully sustainable housing design (each unit was required to be Energy Star and Healthy Built certified). The prior design also proposed varying footprint sizes ranging in scale from 700 - 1250 square feet, 2-3 stories in elevation and up to 44-feet in height. Because the "high quality building materials and designs" was a primary feature included in the original proposal's exceptional development features, staff felt that reconsideration by Council was necessary.

The new design proposed by the applicant incorporates many of the same Arts and Crafts style elements that were approved with the original design and also includes: front porches and rear decks, exposed rafters, decorative brackets, and roof pitches that mimic the character of homes found within the neighborhood. As stated above, homes will remain in the same location as the prior approval to utilize the existing footprints (and disturbance) from the original development. The homes will also be 2-3 stories in elevation and constructed to not exceed 40-feet in height.

In addition to the design features noted above the owner is retaining the requirement that the homes be Energy Star Certified; and in addition, will require homes to be either WNC Healthy Built or National Green (NAHB) certified.

The changes noted above are not expected to negatively affect the findings for the seven conditional use standards that were presented with the original application.

Staff recommends approval of the amendment pursuant to the site plans, elevation character sketches and supplemental design features proposed with this application.

Mr. Michael Lavoy, engineer of record and the property owner's representative, spoke in support of the amendment and stated that he would like to build homes that reflect the community that is in the area.

Rev. Christopher Chiaronmonte felt that developers should build according to the rules and not ask for any exceptions by City Council.

After rebuttal, Mayor Bellamy closed the public hearing at 6:16 p.m.

Councilman Russell moved for the adoption of Ordinance No. 4005, amending the conditional use permit for Sunset Park, located at 2 Sunset Drive, for the reduction in the number of units from 19 to 17 and changes to the building design, elevations and footprints. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 27 - PAGE 128**

**B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF THE PROJECT IDENTIFIED AS DOLLAR GENERAL MARKET, LOCATED AT 1131 SMOKY PARK HIGHWAY FROM COMMUNITY BUSINESS II DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A TWO PHASE RETAIL PROJECT**

**ORDINANCE NO. 4006 - ORDINANCE TO CONDITIONALLY ZONE THE PROJECT IDENTIFIED AS DOLLAR GENERAL MARKET, LOCATED AT 1131 SMOKY PARK HIGHWAY FROM COMMUNITY BUSINESS II DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A TWO PHASE RETAIL PROJECT**

Urban Planner Nate Pennington said that this is the consideration of an ordinance to conditionally zone the project identified as Dollar General Market. located at 1131 Smoky Park Highway, to rezone from Community Business II District to Highway Business District/Conditional Zoning for the development of a two phase retail project. This public hearing was advertised on August 12 and 19, 2011.

Urban Planner Nate Pennington oriented the Commission to the site location and said that the applicant is requesting a Conditional Zoning for three (3) parcels zoned CB-II (Community Business II) to HB-CZ (Highway Business – Conditional Zoning) for the development of a new shopping center in accordance with Section 7-7-8 of the Unified Development Ordinance (UDO). The subject property is located outside the City limits but within Asheville's extra-territorial jurisdiction.

The project site consists of three parcels comprising 5.52 acres according to the submitted site plan. The site is currently vacant but once contained a Winn-Dixie grocery store that has now been demolished. A large asphalt parking lot and concrete slab are all that remain onsite. The former building flooded heavily during the 2004 floods and the subject property is almost entirely located within the 100 year regulated floodplain.

The applicant is requesting a conditional zoning to allow for parking to occur in front of the proposed buildings along Smoky Park Highway. CB-II zoning only allows for parking to occur to the side or rear of buildings while HB zoning allows for parking to occur in the front of buildings. Two separate buildings are proposed to be built: the first would accommodate a Dollar General Market and the second (to be built a later date) would house an undetermined retail store.

Vehicular access to the site is proposed along Smoky Park Highway by utilizing two existing curb cuts and one existing cut along Rutherford Road would be used to allow patrons to utilize the traffic light at the intersection of Rutherford Road and Smoky Park Highway. Two additional existing cuts along Rutherford Road are proposed to be closed.

The project is proposed to be built in two (2) phases. The Dollar General Market will be built first and the second building will be constructed when a tenant is secured.

According to the site plan, 146 spaces are provided inclusive of required ADA parking. This amount of spaces is within the minimum and maximum thresholds as prescribed by the UDO. Nine (9) bicycle parking slots are available and dispersed between two bike racks that are to be located in front of the proposed buildings.

An off-street loading zone is proposed to be located in front and to the side of the Dollar General Market. One additional loading zone will be required for the second building that is proposed to be built as part of phase II of the development. Further, the applicant must depict the proposed truck route (ingress and egress) in relation to Smoky Park Highway and Rutherford Road on the site plan.

Sidewalk construction is required and proposed to be built along Rutherford Road. The applicant has requested to pay a fee in lieu of construction along Smoky Park Highway because of a stream that runs parallel to the road and the inherent requirement to maintain a 30 foot wide stream buffer. The Transportation Department noted in the Technical Review Committee (TRC) staff report that Smoky Park Highway is a needed linkage and therefore this option is not available. The Transportation Department conducted a field visit and verified that there are no

viable options for the required along Smoky Park Highway. Therefore, the developer may wish to appeal to the City Council for a waiver (as indicated in the Standards and Specifications Manual. Staff recommends that if a waiver is granted for the sidewalk that a fee-in-lieu of this requirement still be paid by the developer.

Street trees are required and provided along Smoky Park Highway and Rutherford Road. A 20 foot wide Class "A" property line buffer is required along the northeast portion of the property along Rutherford Road where a single-family residence is located across the street. The proposed parking areas are appropriately landscaped and no modifications are being requested.

The open space requirement for this type of development is 15% of the total site size; a total of 36,037 square feet for this site. The site plan illustrates that 36,070 square feet has been reserved to meet this requirement.

This proposal was recommended for approval with conditions by the TRC on June 20, 2011. A neighboring property owner expressed concerns related to the retention of the curb cut along Rutherford Road and the associated traffic that would utilize this street.

At their regularly scheduled meeting on August 3, 2011, the Planning & Zoning Commission unanimously approved this project with the conditions outlined in the staff report. As previously noted, at the TRC, a neighboring property owner expressed concerns related to increased traffic on Rutherford Road which were addressed by Ken Putnam, Director of the Transportation Department.

Section 7-7-8(d)(2) of the UDO states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposed project makes use of a previously developed site along an active commercial corridor. The previous building was built in 1978 and flooded heavily in 2004 given its location in the 100 year floodplain. The proposed buildings are required to meet flood standards that require the structures to be elevated two feet above the base flood elevation. Appropriate stream buffers have been provided for the associated streams along the eastern and southern boundaries of the subject property.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The single-family residence across Rutherford Road to the rear of the property will be further separated by a Class "A" property line buffer. The remaining portions of the property are surrounded by similar commercial developments of similar zoning along the Smoky Park Highway Corridor. Furthermore, the proposed zoning will allow for parking to occur in front of the proposed buildings

and away from the residential properties along Rutherford Road.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The site is adjacent to a mobile home/modular sales business to the east, commercially zoned vacant property to the west and a number of commercial/industrial uses along the Smoky Park Highway corridor including offices, retail, warehouse, restaurant and the Vulcan materials site. The proposed use is consistent with both the existing zoning and character of the Smoky Park Highway commercial corridor in which it is located while maintaining sensitivity to the residences along Rutherford Road behind the proposed buildings through the use of mitigating factors including additional landscaping, open space and concentrating parking fields towards Smoky Park Highway.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
Elements of the proposal are aligned with the City's goals and objectives as noted in the Compliance with Comprehensive Plan and other Adopted Plans section (listed above). Specifically, the redevelopment of the site is consistent with the goals of infill development along an established commercial corridor.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The site is located near the intersection of Rutherford Road and Smoky Park Highway with frontages along both roads and within two (2) miles of Interstate 40. The closest City of Asheville bus stop is located almost 3.5 miles away on Smoky Park Highway in front of the DMV office. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
Although the anticipated project traffic exceeded 100 vph during the afternoon peak hour, we do not anticipate that the project will create any adverse traffic congestion along the existing street infrastructure. A draft traffic impact study was submitted to the City Traffic Engineer after the completion of this staff report and is currently being reviewed. Additional requirements may apply based on the review of this report.

Based on the above findings and the analysis provided in the report, staff finds this request, with conditions noted, to be reasonable.

Pros:

- Provides an opportunity to redevelop and upgrade a previously developed infill site.
- Will enhance a vacated site with new buildings and a landscaped parking lot that has lied dormant for many years.

Con:

- Although this site was in commercial use previously, that use has ceased for a number of years and some of the residential neighbors along Rutherford Road have expressed concerns about the potential for traffic generation originating from the proposed development onto Rutherford Road.

Based on the above findings, staff recommends approval of the project as requested by the applicant.

Mayor Bellamy opened the public hearing at 6:20 p.m.

An engineer with Patton Development Company, owner of the site, said Dollar General would like to bring one of their modern stores to this location.

Mayor Bellamy closed the public hearing at 6:22 p.m.

Councilman Davis felt this project fits the community well and is an appropriate development for the area.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No. 4006, to conditionally zone the project identified as Dollar General Market, located at 1131 Smoky Park Highway, to rezone from Community Business II District to Highway Business District/Conditional Zoning for the development of a two phase retail project. Phase I consists of a 20,700 square foot Dollar General Market; Phase II consists of approximately 10,000 square feet of future retail space, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) A fee in lieu of be paid by the developer for the sidewalk along Smoky Park Highway. This motion was seconded by Councilman Smith and carried unanimously.

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At 6:26 p.m., Mayor Bellamy announced a short recess.

**C. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO MODIFY AND EXPAND REQUIREMENTS FOR MOBILE FOOD VENDING**

**ORDINANCE NO. 4007 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO MODIFY AND EXPAND REQUIREMENTS FOR MOBILE FOOD VENDING**

Director of Planning & Development Judy Daniel said that this is the consideration of an ordinance to amend Chapter 7 of the Code of Ordinances to modify and expand requirements for mobile food vending citywide, including regulations specific to the downtown Central Business District (CBD). This public hearing was advertised on August 12 and 19, 2011.

She said that mobile food vending (in trucks, not carts) have been regulated in the rest of the city for some time and in most instances operate under temporary use permits. The use is allowed in commercial areas in most parts of the city but not the central business district where a

general prohibition has existed since the Unified Development Ordinance (UDO) was adopted in the late 1990's.

During the summer of 2010 the Planning staff was contacted multiple times by several mobile food vendors interested in an expansion of the regulations for mobile food vending to allow them to work downtown. They were advised that this would need to be evaluated by the Downtown Commission. By late October various stakeholders (primarily restaurant owners and mobile food vendors) were contacting members of City Council requesting the City to consider the issue. Because the primary issue of concern centered on the potential for mobile food trucks in downtown, the staff felt the Downtown Commission was the proper forum for that discussion.

By early November of 2010 with requests from a widening range of stakeholders and widening community interest, the staff requested that the issue be placed on the agenda of the Downtown Commission for an initial discussion. Following that discussion at the November 12 meeting the Commission created a subcommittee to study the issue. After four meetings of that subcommittee (January through June of 2011) and four Commission meetings discussing the issues; the Commission voted 7-2 on July 8 to support proposed modifications to the regulations. Although the work resulted in substantial agreement on elements related to regulating mobile food trucks in most of the city, there continues to be substantial disagreement (strong support for and opposition to) the concept of allowing mobile food vending in the CBD.

The proposed changes fall into two major categories: regulations for mobile food vending sites, and regulations for mobile food vending trucks. Within those changes are the more substantial policy changes that would allow mobile food vending in the downtown CBD area on a limited basis (a limit of ten truck permits), with a review to be conducted within a year after adoption or if substantial problems are found in enforcing the regulations. That review and the elements of enforcement were of particular importance to members of the Commission.

Community Comment: Interest in this issue has been high since it was first discussed at the Downtown Commission in November of 2010, although the primary issue of concern has been about the potential for this use in downtown Asheville. Because the proposed changes reflect helpful new standards for this use citywide, it is important to remember that there was general support for most of the elements of these changes; and the controversy has centered around two provisions allowing food trucks to operate in downtown.

Support came from truck operators and area residents who would like to have this choice available. A survey conducted by the Asheville Downtown Association (ADA) showed strong general support for the concept. The ADA did not take an official position for or against the regulations, stating in a June letter to the Commission that their members are split in their feelings on the issue. That letter expresses support for the majority of recommendations in the proposals (related to mobile food vending citywide), but their representative on the Commission voted against the modifications stating concern about enforcement issues.

The two main groups expressing general concern have been representatives of Downtown Asheville Residential Neighbors (DARN) and members of the Asheville Independent Restaurant Association (AIR). Several downtown residents have commented, and a DARN letter written by a steering committee formed to research this issue was received in August and expresses concerns related to enforcement, noise, and activity. A letter from the Director of the Grove Arcade was received in June expressing concerns essentially similar to those expressed by AIR and DARN.

AIR members have been very involved in the process of reviewing the regulations for Mobile Food Vending. While not taking an official position until the end of the process, since the beginning they have expressed a range of concerns related to the use of Mobile Food Trucks in downtown Asheville. Four downtown restaurant owners attended most of the meetings on this issue including the AIR President Steve Frabitore (of Tupelo Honey), Anthony Cerrato (of Fiores),

Michel Baudouin (of Bouchon), and Anoop Krishnan (of Mela). Downtown Commission Chairman Dwight Butner (owner of Vincenzos) has also been deeply involved in the issue. Many of the issues they thoughtfully raised were addressed in the ordinance proposal recommended by the Downtown Commission such as:

- Proposing the use of "plug-in" devices rather than relying on generators
- Requiring decibel limits for generators
- Limiting the size of food trucks that can be permitted
- Limiting locations and hours of operation for the vendors
- Limiting sales from trucks to food only
- Limiting truck vending locations to private property, no on-street parking spaces
- Limiting the number of trucks to be permitted downtown
- Denying the placement of tables and chairs in the proximity of truck vendors
- Emphasizing the importance of Health Department regulations
- Requesting details on how enforcement would be handled

Their concerns remain intense however, related to certain topics that include:

- Not allowing food truck vendors downtown
- Regulating the appearance of food trucks
- Limiting food trucks to local owners only
- A system for determining the quality and variety of food offered
- A requirement for restroom access for food truck patrons
- A distance requirement, keeping food trucks away from restaurants
- A requirement prohibiting chain restaurants from getting a permit
- A lower limit on the number of trucks permitted citywide and downtown
- A specific liability insurance requirement for food trucks

The Downtown Commission and the Subcommittee appointed to consider regulations discussed all these (and many other issues) at length. Ultimately the Commission did not choose to recommend these (and other) restrictions for various reasons such as:

- Commission members discussed the suggestion of not allowing food truck vendors in downtown Asheville several times, but ultimately did not vote to include that restriction in their recommendation to the Council. The Commission members agreed that allowing the mobile food trucks in downtown should be in the nature of a "pilot program" and recommended limiting permits for the trucks to 10, and a study/evaluation of how the program was working after a year of operation.

- Food trucks will have to be tied to a local restaurant or commissary, so they will be tied to local ownership. The Commission members also seemed to believe that practical matters (like the cost of fuel) would realistically limit the number of out of town truck owners who would want to apply for a permit. There is also a practical challenge to verifying residency.

- Restroom access is not required in the building code, and is not required for downtown food carts already operating.

- Distance requirements between retail businesses of similar types are not required for any other type of business; and chain businesses of any type are not prohibited in the City and it would be questionably legal to prohibit chains with food trucks.

- Commission members declined to require liability insurance. The reasoning appeared to be that legally permitted vending trucks would be responsible. The City only requires liability

insurance for City owned land/property/easements/rights-of-way or in other situations where the City is a party to the activity.

- An appearance standard and food quality/variety evaluation methods would be difficult and perhaps premature if only 10 trucks are to be permitted downtown. After the first year, the issue could be revisited to determine if mobile food vending is successful enough to warrant creating a new review body and guidelines for evaluation.

Ultimately, the most substantial and continuing grievance expressed by AIR members is that the decisions of the Downtown Commission did not address AIR philosophical / policy based concerns about food truck operations in downtown Asheville sufficiently. AIR members stated that they do not believe the Downtown Commission spent sufficient time considering whether food trucks should be allowed downtown at all, before they started developing regulations to govern them downtown and called for an economic impact study to be performed prior to adopting standards (no funding existed for a study). Because of this, they believe the process was flawed and as a result the ordinance, if enacted, could easily cause harm to both individual restaurants and the reputation of downtown as a place for high quality dining experiences. To them this is an issue of equity, fairness, and a responsibility of the Commission to fully research issues before changing restrictions that have existed for many years.

The Downtown Commission reviewed the wording amendment informally over multiple meetings and after lengthy discussion voted 7-2 to recommend approval of the proposed ordinance at their regular meeting on July 8, 2011. The Commission included a number of amendments to the ordinance language which are noted in the summary document and the proposed ordinance. In their approval the Commission has concerns about the following items: enforcement of the regulations including trucks operating without permits and enforcing the rules approved in the ordinance; having sufficient permit fees to provide some cost recovery for enforcement; that the ordinance be reviewed for its effectiveness after a one-year period allowing for a full season of operation.

Commission Chairman Dwight Butner was particularly disappointed with the vote and expressed a range of reasons for his concerns and vote against the measure, as noted on the summary timeline review, he provided to Council. The other 'no' vote was from Mr. Greiner who stated that he was primarily concerned about enforcement issues.

The Planning and Zoning Commission recommended disapproval of the ordinance with a vote of 3-3 at their meeting on August 3, 2011, after substantial public testimony from the public. Concerns centered on enforcement of the ordinance and competition from established restaurants.

The proposal for enforcement was reviewed the Public Safety Committee at their meeting on Tuesday August 16, 2011, and was supported by a vote of 3-0.

This action complies with the City Council Strategic Operating Plan in that the amendment supports the Council goal of broadening opportunities for entrepreneurial activities while managing community character.

Pros:

- Provides new and expanded opportunities for a new entrepreneurial activity during difficult economic times.
- Would contribute to the vitality of downtown
- Could activate under-utilized properties and/or under-developed areas of the city.
- Clarifies the existing rules to govern this use with consistency and efficiency.
- Expands eating options in Asheville.

Cons:

- May place pressure on established restaurants some of whom are already struggling with a slower economy.
- Without proper management trash and noise could be a concern.
- Enforcement has been identified as a concern especially 'after-hours' and weekends primarily from vendors without approved permits.

Depending on the level of interest from this business opportunity there may need to be additional enforcement resources, particularly during late night hours and weekends.

She said that staff urges support for the regulations that affect vending citywide as these advance and update the standards reflecting current trends and observed concerns. There appears to be broad general support for these standards. Substantial disagreement persists on the potential for allowing mobile food vending in downtown Asheville, even on a limited basis and as a one year "pilot program". Those recommendations reflect a substantial policy change that is at the heart of the continuing public debate.

Urban Planner Alan Glines reviewed the existing and proposed regulatory standards. There are several existing options in the *Unified Development Ordinance* (UDO) to permit mobile food vending at the present time in areas outside of the downtown, including operating under a temporary use permit or establishing a permanent vending use through the Level I site plan review process.

**Temporary Use Permits** are the most commonly pursued option for food vending with regulations outlined in the Temporary Use Section, found in 7-14-2 of the UDO. This section describes general specifications such as: a limit on the number of days of operation during a year, a limit on the hours of operation, a requirement that the activity be conducted on private property, that health department licenses be obtained, and standards for basic setback requirements and also identifies a specific prohibition on mobile food vending in the Central Business District.

The wording amendment proposes limited changes to the Temporary Use section permitting mobile vending that would expand options for vending outside of the downtown areas. Those standards are proposed for changes as they appear to have been limited because of concerns about the potential for activity in downtown that don't seem to be shared in other areas of the City. The most significant of these changes is a proposal to allow extended hours of operation (from 10:00 p.m. until midnight or 3:00 a.m.) for locations some distance from residential uses. The display of permits will be required to facilitate enforcement.

**Permanent Mobile Food Vending** is another existing option available in most commercial zoning districts for a mobile kitchen to establish a permanent mobile food vending operation on a regular basis. In this case, the kitchen is mobile, and therefore temporary, but the use is permitted on a permanent basis. The most well known example is the mobile food vendor that operates on the parking lot of the Home Depot on Fairview Road. It was approved in early 2008 as a Level I permit application. This application was reviewed for compliance with UDO standards and as the Home Depot site was fully compliant and had ample parking the application was easily approved. To establish this, two permits would be required – one for the site and one for the truck. The permit for the site will be treated like a Level I permit which means that it will be treated like other small scale development – setbacks will be considered, access to the site is looked at, site improvements, if any, would be reviewed, the parking demands of other uses on the parcel will be considered, if permanent electrical service will be brought to the site for the trucks to use, the locations will be reviewed, etc. A permit for the truck will also be required. The permit will be tied to a specific approved site, and operating without a permit will be a Class III misdemeanor and enforced by the Police Department. Permitting for this policy would apply City-wide inc commercial districts, except in the downtown Central Business District, as the Downtown Commission recommended limiting permits to 10 individual trucks for the pilot period. Other

areas of the City will not be limited by the number of permits for trucks. The truck permits will be reviewed annually.

Development of the proposed ordinance began with a review of current regulations, studying examples from other cities and working through a variety of details with the Downtown Commission study group, the Downtown Commission and other stakeholders.

Ultimately the staff provided information to the Subcommittee and Downtown Commission based on information derived from ordinances in six North Carolina cities (including but not limited to Charlotte, Durham, Raleigh, Greensboro, and Winston-Salem), and 12 cities throughout the rest of the country (including, but not limited to Savannah, Charleston, Austin, Portland, Madison, and Seattle); as well as multiple on-line and in-print magazines and newspaper stories submitted for staff review by other staff and members of the Downtown Commission and the Subcommittee members and stakeholders. Information and alternatives from all of these cities were used to provide alternative options for consideration by the Subcommittee and full Commission as questions and requests for additional information and research arose during the nine month process that led to the Commission's recommendation to the City Council.

Some of the ordinance amendments for permanent mobile food vending were based on the Home Depot example, borrowing from the concept that you can have a permanent use without a permanent structure. This concept was then explored further with additional research and input provided by the mobile vending discussion subcommittee of the Downtown Commission and area stakeholders including the Downtown Commission, the River Arts Business Group, citizens working on planning issues for Haywood Road, and the Asheville Downtown Association. The purpose of the new ordinance is to make a set of rules that apply city-wide that everyone can understand and follow. Some of the most substantial changes include:

- To establish mobile food vending on a permanent basis a total of two permits are required: one for the site and one for the truck. The permit for the site will ensure maneuvering onto the site, spacing, setbacks and required site improvements.

- The permit for the truck will ensure that Buncombe County requirements are met, that power sources and the noise level of the generator (if applicable) are acceptable, an approved site is identified, and that signage and other standards noted in the ordinance and pertaining to trucks are complied with.

- Even though the use may receive permanent approval to operate on a parcel, the mobile kitchen is temporary in nature and requirements from the building code such as accessibility features and restrooms, will not apply because there is no permanent structure.

- Hours of operation are proposed to be from 6:00 a.m. to 3:00 a.m. to capture a wide array of meal times and late night food vending, but are reduced to 12 a.m. (midnight) when located within 200 feet of a residential use.

- Access to the site is being considered with each application so partial access for patrons will be assured.

It is also important to note that under a separate permit, Buncombe County Department of Health approves the mobile kitchens and inspects them on a regular basis. Some of these State health regulations affect the operation such as the requirement that single-use utensils, plates and cups be used to serve patrons.

Proposals affecting Downtown: Representing a policy change for the City, mobile food vending would be expanded as a permanent allowable use in the Central Business District zoned

areas of the city for the first time. The regulations affecting downtown include the following major elements:

- They would be limited to a total of ten trucks for the entire downtown Central Business District as an introductory number that can be expanded, reduced, or eliminated depending on any issues or notable successes.

- Although there has been some cursory review of potential sites downtown for mobile food vending, negotiations for these operations will be between the interested mobile food vendors and the owner(s) of the property; however, it has been noted that there is marked demand for surface parking especially in the heart of downtown and this may inherently limit the availability of vendor locations.

- The proposed hours of operation of 6:00 a.m. to 3:00 a.m. are not reduced to a midnight closing when proximate to residential uses in the CBD. This CBD exemption has generated some comment from DARN; however, the Central Business District is primarily a business district and after discussion the Downtown Commission decided to not impose this limit as most other businesses are not limited in their hours of operation.

Mr. Glines then reviewed the following new definitions to the ordinance (as amended by the Downtown Commission), noting the Downtown Commission changes specifically:

- *Mobile food site* means an individual parcel where mobile food vending is permitted to occur on a permanent basis

- *Mobile food vending* means commercial food service sales by a mobile food vendor on a parcel of land outside of right-of-way areas. Sites approved for permanent mobile food vending are classified as a mobile food site.

- *Mobile food vendor* means an individual who owns and operates a vehicle (truck or trailer with a maximum of two axles) that includes a mobile kitchen that supports the sale and/or preparation of food and non-alcoholic beverages which is licensed and approved to walk-up customers.

Mr. Glines said that in order to establish the use of making mobile vending a permanent use on a site, the following regulations must be followed, specifically outlining the Downtown Commission changes:

a. Use Districts: Office, Office II, Office Business, Community Business I, Community Business II, Institutional, Highway Business, Regional Business, Central Business, River, Commercial Industrial, Light Industrial, Industrial, Urban Village, Neighborhood Corridor, Urban Place

b. Permitting: Permitting to establish mobile food vending as a permanent use will incorporate the following permits:

1. Permitting the mobile food site: Mobile food vending will only be allowed on parcels with an approved development permit and the actual number of vendors permitted will be dependent on site conditions and the ability to comply with spacing requirements in section 'c" below.

2. Permitting the mobile food vendor: A mobile food vendor is required to obtain a permit for each separately approved mobile food site where vending will occur, according to the following regulations:

   a. A mobile food vendor is permitted to vend at more than a single site but

each location must be approved by individual permit.

b. The Mobile Food Vendor permits will be renewed annually along with requirements for the Buncombe County Health Department.

c. The number of permits issued to individual mobile food vendors for the downtown Central Business District will be limited to 10. Vendors may vend from multiple locations subject to the ability to meet other requirements.

d. Mobile food vendor permits will run with the calendar year and existing vendors will have the option to renew.

e. Permits from Buncombe County and the City of Asheville shall be visually displayed on the mobile kitchen.

f. Copies of other required permits will be submitted with the mobile food vendor permit application.

c. Site Improvements: The permit to establish a mobile food site will require approval of a site plan illustrating the proposed placement of the mobile food vendor(s) and the following items:

1. Access into the site and parking for vendor patrons at the rate of one parking space per mobile food vendor (applicable only if off-street parking is required in the zoning district).
2. Landscaping - The site will be improved to meet the standard for street trees. In addition the affected area of the site will provide a minimum eight-foot wide property line buffer when directly adjacent to residentially zoned and used parcels. This buffer should be planted to include a mix of evergreen and deciduous trees and shrubs to result in a vegetative screen that is 75% opaque year-round. As an alternative, the buffer may be reduced by 50% with the installation of an opaque fence. Existing buildings that screen the impacts of the mobile food vendor(s) will be considered a substitute for the property line buffer or portions thereof.
3. Sidewalks - Sidewalks will be required along the frontage lines of the parcel if the road is designated on the City's needed linkages sidewalk list.
4. Site maneuvering - Each mobile food vendor will need sufficient space for maneuvering onto the lot, for safe access by pedestrians, and for emergency response.
5. Setbacks - Setbacks for individual mobile food vendors will be ten feet from side and rear property lines and other parked vehicles (if any). There is not a required setback from the frontage line except that no portion of the mobile food vendor will be permitted to encroach into the right-of-way.
6. Other site features - Permitting for the mobile food site will take into consideration the ability for the primary site user to maintain compliance with minimum parking standards (if there is one) referencing the specific zoning district standards as described in the UDO.
7. Permanent electric power infrastructure is the preferred method for supplying power at the mobile food site. If this is pursued, then the applicable permits must be obtained.

d. Other requirements for mobile food vendors:

1. No mobile food vendors will be permitted to vend in a public street, sidewalk or right-of-way.
2. All mobile food vendors are required to maintain permits issued by the Buncombe County Health Department and the City of Asheville will defer to Buncombe County for health and food safety regulations.
3. All mobile food vendors shall leave the mobile food site when they are not in operation.

4. Aside from festivals or special events that are permitted under separate event permits, the mobile food vendor will be required to maintain a list of the location(s) for operating the vending unit.
5. Mobile food vendors will be limited to the sale of food and non-alcoholic drinks. The sale of other merchandise or services will not be permitted.
6. Mobile food vendors are encouraged to use recyclable and/ or compostable containers, cups and utensils.
7. Hours of operation: (a) Mobile food vendors will be limited to the hours of 6:00 a.m. until midnight if they are within 200 feet of a residential use (locations in the downtown Central Business District excluded); (b) Mobile food vendors who are not located within 200 feet of a residential use or are located in the downtown Central Business District may not operate between the hours of 3:00 a.m. and 6:00 a.m.
8. The mobile food vendor(s) will be required to remove trash and litter from the mobile food site each day and to maintain the cleanliness of the site during hours of operation. The vendor must provide a receptacle for use by patrons.
9. The mobile food site will be subject to the outdoor lighting and noise ordinance standards established by the City of Asheville.
10. Outside power for the mobile food vendors may be provided by electric power pedestals as a preferred method or by a generator(s) operating at 65 decibels or less and which are properly attached per manufacturer's standards to the mobile food vehicle. Mobile food vendors utilizing a generator may not operate closer than 100 feet to a residential use, unless the generator operates at less than 50 decibels in which case distance will not be restricted except by other setbacks.
11. Vendors may not bring tables and chairs to the mobile food site except that a single chair may be brought by the vendor for use by staff. In addition stand-alone tents, shade clothes, steps, etc. may not be brought to the site by vendors.
12. Mobile food vendors shall maintain 20 feet between other mobile food vendors based on fire code separation.
13. Vendors will be subject to random inspections to ensure compliance with all applicable requirements.
14. Signage: Mobile food vendors may have signage on their vehicle, not to exceed 32 square feet total per vehicle including letters and/or logo advertising the business. Square footage may be divided between a maximum of two faces. No roof signs will be allowed. A single attached menu board totaling 6 square feet is also allowed for each truck.

Assistant Planning & Development Director Shannon Tuch said that enforcement in general can be challenging and there's no perfect formula to enforcement that works in all, or even most situations. Add to the normal challenges of enforcement, a mobile activity is inherently more difficult to track and regulate so it certainly warrants some special attention.

The majority of the concern related to enforcement has revolved around the fear that adopting standards would create a culture of acceptance for unpermitted or illegal food trucks – especially late night and after hours when there is less monitoring. Recognizing that our normal zoning enforcement has its limitations and that there may be a heightened public welfare concern related to unpermitted trucks, we knew that there was more work that we had to do with this issue and, it was clear that the Downtown Commission, while in support of adopting standards overall, remained concerned about enforcement and directed staff to investigate stronger options. In response to this, Planning staff arranged for a discussion with the Police Department to see if there was a way to better address these enforcement concerns through a collaboration.

These conversations were very informative and productive. Both Planning and the Police felt that monitoring this new activity could be absorbed into out normal patrolling and enforcement responsibilities and would not be overly burdensome, particularly if certain parts of the

enforcement could be shared. To accomplish this, the ordinance would have to be written in such a way as to assign both entities some specific authority. After some discussion and recognizing the nature of the community's concerns and the strengths of the two departments, it made sense to assign the enforcement of the illegal trucks to the Police Department and so that all unpermitted (or illegal) food trucks would be a Class III misdemeanor. All other violations related to the standards of the permit would be handled by zoning enforcement.

For an example, if someone sets up late night operating from an alley somewhere and the Police comes across them, and they don't have a permit, this would be a felony misdemeanor and the Police officer on the scene would be able to handle that situation per their normal protocol. And it should be easy for the Police to identify those who don't have a permit because it is a requirement of the ordinance that the trucks post their permit so it will be very recognizable for all who approach the truck. But, if someone has a valid permit and is just operating too late, or leaving trash behind, or are operating on a day that they hadn't been permitted for, then Zoning would handle these per our normal civil enforcement process. Additionally, for those who are permitted, our staff would be arranging for periodic but random inspections to ensure that the vendors are operating within the parameters of their permit.

This general enforcement concept was supposed to go before the Public Safety Committee for some additional review and feedback prior to Planning & Zoning Commission; however, due to a canceled meeting, staff was unable to receive this review prior to the Planning & Zoning Commission meeting. Additionally, the timing of the discussions with the Police Department did not provide enough time to include this information into the staff report and ordinance that the Planning & Zoning Commission reviewed, so staff had to share the concept (verbally) during the Commission meeting. Despite these positive steps regarding enforcement, the Planning & Zoning Commission remained concerned.

With some new questions raised by the Commission regarding the mechanics of enforcement, staff then developed an outline of exactly how we expected the enforcement process to work. This, along with the overall general concept was, ultimately reviewed before the Public Safety Committee, where the general idea and process was well received. With this positive review, staff was then able to incorporate the enforcement concept into the report and ordinance that Council received (so the Council has the benefit of some information that was not available to the Planning & Zoning Commission).

Again, our concern is not so much with the permitted vendors as those who are unpermitted; and the proposed standards are simple and clear enough that we don't anticipate a lot of zoning enforcement. But, in the event that we do experience an influx of unpermitted vendors, the Police will be in a better position to deal with these violators and can offer a stronger disincentive.

To summarize, it is largely through the assistance of the Police Department that we feel that we are better equipped to adequately regulate this new proposed land use.

She stressed that it is staff's intent to return in a little over a year to provide a report on mobile food vending. If staff experiences significant issues before the one year, they will come back to Council with an ordinance amendment.

Mayor Bellamy opened the public hearing at 6:59 p.m.

Mr. Michel Baudouin, owner of Bouchon restaurant on Lexington Avenue, expressed deep concerns about the process and outcome of the proposed ordinance. Due to the special character of Asheville's downtown, he asked Council to leave the ordinance as is or extend the decision-making process in considering the ordinance as it is proposed. If adopted, he suggested (1) reducing the hours from 6:00 a.m. to Midnight on weekdays and 6:00 a.m. to 10:00 p.m. on weekends; (2) reduce the initial number of trucks from 10 to 5 which will allow the City staff to

become more acclimated to their new enforcement responsibilities; (3) develop an enforcement plan for City sales tax collection; (4) investigate why restaurants are limited to a 20 pound heater tank while food trucks carry 100 pound heater tanks; (5) require compostable/recyclable disposables; (6) review why there is no stated limit on the number of times a mobile food vendor can change their operating hours; and (7) also prohibit site landlords from supplying the site with tables and chairs. He felt the ordinance ignores the 2000 downtown residents and the concerns of the business owners who are not only paying top dollar for their real estate, but who also contribute the largest tax revenue per square foot in the City.

Chef Andrew Maykuth supported permitting mobile food vendors in downtown Asheville. He felt competition is a good thing and Asheville needs to live up to its potential.

Dr. Milton Byrd supported mobile food vending felt Asheville is great for the opportunity of culinary expression.

Rev. Christopher Chiaronmonte spoke in support of downtown mobile food vending and was concerned about the amount of insurance required for the vendors and that the downtown restaurant owners will purchase the allotted 10 permits.

Mr. Larry Holt, downtown resident, supported mobile food vending downtown; however, was concerned with the proposed hours of operation. He felt 3:00 a.m. is unreasonable for downtown residents who already have enough noise. He suggested limiting their closing hours to 10:00 p.m. or Midnight at the latest. He was also concerned that there are no restroom facilities late in the evening. He also wondered who would be cleaning up the trash. He hoped Council would consider the concerns from the residents downtown and make special exceptions.

Mr. Dwight Butner, owner of Vincenzo's Ristorante & Bistro, member of the Downtown Commission, and found member of AIR, said that mobile food vending downtown was banned several years ago because people thought it was important to put tenants in our historic buildings to revitalize downtown. He said the ordinance applies to the City as a whole and creates a whole new category of street food vending. It does limit the number of permits downtown, but there is no limit to the number of locations downtown that you can do it. It also does not limit the number of locations outside of downtown. He noted that Fire Codes restrict restaurants throughout the City not to use propane heaters more than 25 pounds, but this will allow food trucks in downtown with 100 pound propane tanks. He felt the 65 decibel level for generators should be lower. Finally, he felt allowing mobile food vending downtown will deter residential development in the downtown.

Mr. Nate Kelly, mobile food vendor, felt that mobile food trucks are part of the future and are a good alternative to fast food chains. He felt they will draw people to downtown and they will be exposed to other downtown venues. Change is vital to avoid stagnancy.

Ms. Gail Childress, downtown resident, was concerned with the late hours that the mobile food vending trucks will be allowed to operate from a noise standpoint.

Ms. Mary Ann West, representing the Downtown Asheville Residential Neighbors, said they request the hours be limited to 6:00 a.m. to Midnight with a buffer zone. She said that to allow the vendors to operate until 3:00 a.m. will adversely affect their quality of life downtown and also hurt the value of their condominiums. She also felt there should be mandatory regulations regarding trash pick-up, restrooms and clean-up of the entire area wound the food truck. She hoped Council would take the time to work out all the details before adopting the ordinance.

Mr. Joe Minicozzi, Executive Director of the Asheville Downtown Association, explained the Downtown Commission's survey results regarding mobile food trucks. The Association has not taken a position on this issue, but the Issues Committee validated the following recommendations: (1) no mobile food vending be allowed on public streets; (2) any property that

should utilize mobile food vending shall be brought to the City's parking lot landscaping standard; (3) we suggest a required and measurable decibel limit (per unit and/or combined for the site) for generators, as measured from the adjacent sidewalk or habitable neighboring structure, whichever is closest; (4) require on-site trash and recycling; (5) we support the "no Styrofoam" recommendation; (6) a limit on the size of truck (we suggest "no mobile food vending vehicle shall be more than two axles and trailers no more than one axle"); (7) the state requirements for health inspection must be met and enforced; and (8) we encourage permitted, inspected, and approved electrification of site as part of the landscaping requirements, where possible, to help mitigate the generator issue.

Mr. Joe Cauble, downtown resident, spoke in support of mobile food vending downtown.

Ms. Allison Murphy, mobile food truck owner, was looking to expand food options to healthy, organic foods.

Mr. Barry Summers spoke in support of allowing mobile food vendors downtown. He wanted to make sure that one vendor can't monopolize all 10 locations downtown.

Ms. Susie Phillips, mobile food truck owner and founder of the Asheville Street Food Coalition, felt that mobile food vending is a "to-go" food which will target people more at night after the bars close at 2:00 a.m. Great food and small business owners deserve to be embraced and fostered by the community. She explained that progressive cities have mobile food trucks and felt this is a stepping stone for some who start small and then graduate into a restaurant building. Food trucks provide job opportunities, obtain licensing and permit certifications and pay taxes, just like restaurants. We need to foster positive communication between street vendors, residents and businesses downtown. In addition to the Police Department and Planning staff enforcement, the Coalition would like to create something similar to a neighborhood watch.

Mr. Tim Peck felt that with the City's enforcement and the vendor's own interest in following out the rules and pointing out violators, the enforcement concerns have been addressed. He supported the mobile food vending downtown.

Ms. Marnie Graves, mobile food truck owner, said she buys local and tries to provide healthy alternatives to fast food.

Ms. Kim MacQueen, downtown business owner, expressed concerns regarding trash, lack of restroom facilities, noise and competition with existing restaurants.

A gentleman felt this is a way to cater creativity and Asheville should foster this type of movement.

Ms. Audrey McMurray, mobile food truck owner in the River Arts District, explained an incident where she was permitted; however, her permit was revoked due to an oversight error in the issuance.

Mr. Sadler supported the vendors being allow to remain open until 3:00 a.m.

A food and beverage worker supported relaxing restrictions on mobile food vending downtown.

Rev. Lisa Landis felt the mobile food vendors want to support themselves and the City should help them like they do other economic developments that come to Asheville.

Mayor Bellamy closed the public hearing at 7:48 p.m.

Councilman Russell, Chairman of the Public Safety Committee, felt the process has been good. He said that no one person can buy all ten permits. The property owner will have to work with the vendors on keeping their property clean. He noted that there is no time that a person cannot call the Police if they feel someone is violating the noise ordinance. He address the potential concerns and noted that if Council or staff identify problems, Council has the authority to make changes.

Councilman Russell moved to adopt the ordinance as proposed by the Downtown Commission allowing 10 independent mobile food vending trucks in the Central Business District and that an application cannot be submitted until the truck is approved by the Health Department which would prevent someone from buying all 10 permits and not owning a single truck. This motion was seconded by Councilman Smith.

Staff responded to various questions/comments by Council, some being, but are not limited to: why do the vendors have to specify their hours of operation on the permit and what if their hours change; explanation of the temporary use permit option vs. this new ordinance which would allow multiple vendors on a single site; confirmation that the City is not requiring any liability insurance for mobile food vendors since they will be on private property; confirmation that the City does not require any liability insurance for brick and mortar restaurants, unless they have an encroachment agreement for use of the sidewalk; are food truck vendors required to pay food sales tax; and confirmation that the land owner and the mobile food truck must both obtain a permit.

Councilman Smith felt we should provide an incentive to encourage vendors to get a permanent electrical power infrastructure and use recyclable and/or compostable containers, cups and utensils, since it is the City's preferred method. Planning & Development Director Judy Daniel said that every time they meet someone has an idea or another concept, and perhaps staff could work on those ideas during this one-year trial period.

Councilwoman Manheimer noted that food trucks are only allowed on ten private property locations. She did have concerns about the hours of operation and personally felt Midnight is when the vendors should close. She felt that as long as setback requirements are met, she could support a few tables and chairs. Regarding the generator noise, she felt that should be revisited after the trial period. She noted concern with the portion of the motion what requires someone to own a food truck before they apply for a permit. She felt that most people would apply for permits before they begin constructing or making substantial investments. That would be a financial leap without knowing the outcome.

In response to Councilwoman Manheimer's concern with the motion, Councilman Russell and Councilman Smith both accepted an amendment to the motion that the permit will require the vendor to begin their operations within 30 days after receipt of the permit or the permit will be revoked. City Attorney Oast said that the Planning Director can extend that time as she can for other types of permits for an additional 30 days. The amended motion now reads "Councilman Russell moved to adopt the ordinance as proposed by the Downtown Commission allowing 10 independent mobile food vending trucks in the Central Business District and that the permit will require the vendor to begin their operations within 30 days after receipt of the permit or the permit will be revoked. This motion was seconded by Councilman Smith."

Councilman Davis, member of the Downtown Commission, felt staff has crafted an ordinance from a lot of public participation. He said that we did benchmark food trucks in various cities, but did not feel that we had a clear benchmarking of cities in similar situations to Asheville. It's not easy for anyone to go into business, but he is concerned for those who do pay property taxes and worked hard to make downtown Asheville successful. Food trucks will bring another food venture to the table, but there is worry in our struggling economy of the health of existing downtown businesses. We have tried to urge people to live downtown yet we are going to treat it as a non-residential area. He was very familiar with the sound of generators and felt that 3:00

a.m. with a 65 decibel generator is not a pleasant sound. He felt there should be some incentive for not using generators. He said that trash is a problem, noting that people do not stand at the food truck and eat. The City's expense will be more trash cans in the downtown area. He was also concerned with 10 permits in the downtown CBD because that's 10 points of sale in a 50 block area. He would like to be supportive, but he has heard from a large part of the community who is less vocal.

When Councilman Davis questioned cost recovery of permit costs, Ms. Tuch said that the permit for the site is $104 and the permit for the truck is $104. He hoped that the Finance Committee will review that amount.

Vice-Mayor Newman was also concerned about noise during the late hours of operation when a vendor is using a generator. It has been his observation that the noise ordinance is hard to enforce. Therefore, he asked for an amendment to the motion to restrict the hours of operation to 11:00 p.m. for a vendor using a generator, but 2:00 a.m. if the vendor is using an electric power pedestal. This motion was seconded by Councilwoman Manheimer.

In response to Councilman Russell, City Attorney Oast said that the City's noise ordinance has no decibel limit. It is complaint driven and based on a reasonable person's sensitivity.

Councilman Smith liked the idea of the amendment to the motion in that it creates an incentive for using an electrical power pedestal; however, he asked if Vice-Mayor Newman and Councilwoman Manheimer would be willing to change the hours from Midnight for those using a generator and 3:00 a.m. for those that use an electric power pedestal.

Vice-Mayor Newman could not think of any other business activity that Council would allow to run a generator until 3:00 a.m. in our downtown area. He would not be willing to extend the hours from his amendment.

The amendment to the motion made by Vice-Mayor Newman and seconded by Councilwoman Manheimer carried on a 5-2 vote, with Councilman Russell and Councilman Smith voting "no."

The amended main motion is as follows: "Councilman Russell moved to adopt the ordinance as proposed by the Downtown Commission allowing 10 independent mobile food vending trucks in the Central Business District except that the hours of operation for mobile food vendors are from 6:00 a.m. to 11:00 p.m. for a vendor using a generator, and 6:00 a.m. to 2:00 a.m. for a vendor using an electric power pedestal; and that the permit will require the vendor to begin their operations within 30 days after receipt of the permit or the permit will be revoked. This motion was seconded by Councilman Smith."

In response to Councilman Bothwell, Ms. Tuch said that staff is relying on the already established application process fees, explaining that a permit will be required for each site, as well as the truck. Councilman Bothwell felt the only other site specific permit is for our adult entertainers because we assign them to the place they can entertain. Those permit fees are $500. He liked the idea of mobile food vending and understood the concerns of downtown residents, but could not support the motion unless it requires the vendors to use electric power pedestals. He felt that would help with air and noise pollution. He asked for an amendment to the amended main motion that only electric power pedestals be allowed in the Central Business District. This motion was seconded by Councilwoman Manheimer and carried on a 4-3 vote, with Vice-Mayor Newman, Councilman Russell and Councilman Smith voting "no".

The amended main motion is as follows: "adopt the ordinance as proposed by the Downtown Commission allowing 10 independent mobile food vending trucks in the Central Business District except that the hours of operation for mobile food vendors are from 6:00 a.m. to

2:00 a.m.; that only electric power pedestals be allowed in the Central Business District; and that the permit will require the vendor to begin their operations within 30 days after receipt of the permit or the permit will be revoked."

In response to Mayor Bellamy, Ms. Daniel said that staff will modify the ordinance to include the prohibition of mobile food vendors in City parking decks, because it was staff's intent to prohibit them on any City property.

Mayor Bellamy wondered if the penalty was high enough and what the likelihood would be for an illegal food vendor, possibly from out of town, paying a Class III misdemeanor violation. In response, City Council Oast said that the penalties can be less than a Class III misdemeanor, but they can't be any higher. Mayor Bellamy also questioned the lack of the Planning & Zoning Commission, Downtown Commission and Public Safety Committee minutes for Council to review.

In response to Mayor Bellamy, Ms. Tuch said that the application fee of $104 is for a Level I site plan – similar to a small site review. It seemed appropriate to charge that same level of fee because the review is not anymore significant. We are also charging an additional $104 fee for the truck itself so staff can review the truck standards and then follow-up with an inspection of the truck. This is consistent with our existing permitting process. We do recognize that there is an opportunity to review fees and charges in the summer and staff's intent is to follow this and see if we are doing cost recovery and if not, they would go to the Finance Committee with a recommendation, or bring forward a recommendation after the one-year trial period.

Mayor Bellamy did understand staff's reasoning with the $104 permit fee, but bricks and mortar restaurants downtown pay $200,000 in property taxes. And, for individuals who want to do business in downtown are asking to pay only $104. The vendors pay no property tax and no food & beverage tax but they are benefitting from the Asheville brand. She felt that was unfair.

In response to Mayor Bellamy, Mr. Glines said that every truck that receives a permit from the Buncombe County Health Department has to tie their permit to a bricks and mortar restaurant. The truck has to report to the restaurant at least once each day for preparation, disposal of wastewater, grease disposal, rubbish removal, etc. They also have to have an arrangement with a restaurant to even operate as a food truck. That issue is handled by the Buncombe County Health Department.

Mayor Bellamy recommended the Boards & Commissions Committee consider discussion of an oversight committee to look at this new initiative going forward. Even though this is a pilot program in downtown, it is still allowed in other areas in our community.

When Mayor Bellamy questioned the disparity regarding propone tanks on mobile food trucks vs. brick and mortar restaurants, Ms. Tuch said that when the propane heater is attached to the vehicle, that is a NC Dept. of Motor Vehicle issue. The recommendation is that it just has to comply with the manufactured instructions and be covered under the NC Dept. of Motor Vehicles. Mayor Bellamy asked for a representative from the Fire Department or the Building Safety Department to respond to that question.

Mayor Bellamy agreed with Councilman Davis that additional trash cans were needed in the downtown area and it was the consensus of Council to have staff bring forward a budget amendment, if necessary.

Mayor Bellamy wondered if the age of the mobile food trucks has been an issue raised since Asheville is trying to reduce their carbon footprint. The Airport is looking at making age requirements on the vehicles that bring people into Asheville and she felt we should at least consider that for people that are being fed.

In response to Mayor Bellamy, Ms. Tuch explained the instance with Ms. McMurray in the River District.

When Mayor Bellamy asked if permit would be issued tomorrow if the ordinance is adopted at this meeting, Ms. Tuch said that people can come in and apply for the permits. Staff would then review the application and if it meets all the standards then the permit would be issued. She noted that trucks can't be permitted until the sites are established.

Mayor Bellamy was concerned with the permit fee of $104. She felt it was too low for the benefits immediately reaped.

In response to Mayor Bellamy, Ms. Tuch said that we have approximately 17 sites downtown for pushcarts, but not all the sites are occupied.

In response to Mayor Bellamy's concern of no separation requirements for the food trucks, Ms. Daniel said that was extensively discussed by the Downtown Commission; however, they decided to not have separation requirements.

Mayor Bellamy was also concerned of the transit nature of the ordinance. She felt we needed to get some of the remaining issues resolved before opening the door for business.

In response to Vice-Mayor Newman, Ms. Tuch explained that we already have the fee for what staff is calling a Level I. Our permit fees for a Level I escalate based on the square footage. The lowest fee for a Level I is $104 for projects less than 1500 sq. ft.

Vice-Mayor Newman agreed with Mayor Bellamy in that the permit fee is too low. He felt we need to have this endeavor come close to covering the operational expenses that the City will carry over the year as we look at this issue. City Attorney Oast cautioned Council to be cautious in setting these fees because under N.C. law the fees have to approximate cost recovery. He said it may be possible to establish a separate and higher business license fee, but he would have to investigate that issue.

At 8:57 p.m., Councilman Smith called the question.

The following amended main motion made by Councilman Russell and seconded by Councilman Smith carried on a 4-3 vote, with Mayor Bellamy, Councilman Bothwell and Councilman Davis voting "no" – "adopt the ordinance as proposed by the Downtown Commission allowing 10 independent mobile food vending trucks in the Central Business District except that the hours of operation for mobile food vendors are from 6:00 a.m. to 2:00 a.m.; that only electric power pedestals be allowed in the Central Business District; and that the permit will require the vendor to begin their operations within 30 days after receipt of the permit or the permit will be revoked."

City Attorney Oast said that because the ordinance was not adopted by a 2/3 vote of Council, it is necessary to bring the ordinance back at the next meeting for a second and final reading. This will allow some time to investigate some of the concerns of Council. He noted that the second reading does not require a public hearing unless substantive changes to the ordinance.

In response to Councilwoman Manheimer, City Attorney Oast said the ordinance can be further amended when considered on its second and final reading.

It was the understanding of Council that the following concerns would be addressed on the second reading: appropriateness of the review fees; the possibility of adopting a business privilege license fee; a plan to supplement trash collection downtown; provide the Council with the

Planning & Zoning Commission and Downtown Commission minutes; and the difference of propane tank requirements.

**ORDINANCE BOOK NO. 27 – PAGE 137**

**Closed Session**

At 9:03 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: City of Asheville; J. Jerome Jensen, et al (Biltmore Lake Annexation). The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a) (3); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously. This motion was seconded by Councilman Russell and carried unanimously.

At 9:41 p.m., Councilman Russell moved to come out of closed session. This motion was seconded by Councilman Bothwell and carried unanimously.

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 11-180 - RESOLUTION AUTHORIZING THE MAYOR TO APPROVE A GRANT OFFER FROM THE FEDERAL AVIATION ADMINISTRATION**

City Manager Jackson said that we routinely consider the Federal Aviation Administration (FAA) grant offers; however, since the grant offer materials were not made available prior to placing this on Council's agenda, a list of questions were submitted to the Airport, which answers have been received and provided to Council. As a courtesy to the Airport, the item was placed on the agenda.

Mr. Lew Bleiweis, Airport Director, asked for Council to consider a resolution authorizing the Mayor to approve a Grant Offer from the Federal Aviation Administration (FAA) in an amount not to exceed $1,669,030. He explained this grant is for the following projects: (1) Purchase of new Aircraft Rescue Firefighting Vehicle to replace existing fire apparatus which has exceeded its useful life - total cost of this vehicle is $382,965 (2) Design services associated with a new Aircraft Rescue Firefighting Facility – total cost of these services is $541,409; and (3) Conduct of an Airport Master Plan Update for the Asheville Regional Airport – total cost of services is $832,500. The total FAA grant is expected to be in the amount of $1,669,030, which represents 95% of the total share of eligible costs of these projects. The remaining 5% of the total costs will be funded by the Airport Authority.

When Vice-Mayor Newman asked if Council's approval in this in any way would prejudice or close down any options relative to consideration of a joint use fire facility at the Airport, Mr. Bleiweis replied it does not. He said any continuation on discussions with a joint fire house with the City has no impact on that at all.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 11-180. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 145**

**B. RESOLUTION NO. 11-181 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION**

Vice-Mayor Newman said that the terms of Cindy Weeks, Darryl Hart and Jerome Jones, as members on the Planning & Zoning Commission, expire on August 14, 2011.

The following individuals applied for vacancies on the Commission: Britt Lippard, Joseph Minicozzi, Kenneth Fulford, Mark Mathews, Bruce Greene, David Mosrie, Jeremy Goldstein, Dustin Pulliam, Tony Hauser, Jane Gianvito Mathews, Kristy Carter, Jeff McGahee, Michael Bragg, Pete Hildebrand, Terry Meek, Abigail Emison, Ellen Nutter, Steve Rasmussen, and Barber Melton. Ms. Lippard, Mr. Hauser and Mr. Bragg did not submit written responses to questions sent to all candidates, and were not considered for the next step of interviews.

At the August 9 meeting, it was the consensus of Council to interview Joseph Minicozzi, Mark Mathews, Bruce Greene, David Mosrie, Jeremy Goldstein, Jane Gianvito Mathews, Kristy Carter, Abigail Emison and Steve Rasmussen.

Vice-Mayor Newman said that earlier in the day each of the nine candidates received a 20-minute interview.

At the request of Vice-Mayor Newman, it was the consensus of Council that each Council member identify 3 candidates and any candidate that receives 4 votes will be appointed to the Commission. He then explained the voting process.

After other Council members spoke highly of the strong candidates, Joseph Minicozzi received 3 votes; Mark Mathews received no votes; Bruce Green received no votes; David Mosrie received 2 votes; Jeremy Goldstein received 4 votes; Jane Gianvito Mathews received 4 votes, Kristy Carter received 4 votes, Abigail Emison received 3 votes; and Steve Rasmussen received 1 vote. Therefore, Jeremy Goldstein, Jane Mathews and Kristy Carter were appointed as members of the Planning & Zoning Commission, to each serve a three-year term respectively, terms to begin immediately and expire on August 14, 2014, or until their successors have been appointed.

Mayor Bellamy thanked Cindy Weeks, Darryl Hart and Jerome Jones for their hard work on the Planning & Zoning Commission.

**RESOLUTION BOOK NO. 34 – PAGE 146**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Rev. Christopher Chiaronmonte spoke about harassment by the Asheville Police Department.

Mr. Timothy Sadler expressed concerns as he felt there was a certain level of profiling against the homeless. In addition, he hoped that the City was prepared for any potential damage from Hurricane Irene. Mayor Bellamy said that City Manager Jackson would investigate Mr. Sadler's profiling concern. She also felt it would be appropriate for Council to have an emergency response update and invite a representative from the Land-of-Sky for an update on their fuel effort.

The following claims were received by the City of Asheville during the period of July 22 – August 11, 2011: Kelly Nash (Parking Services); Jennifer Westmoreland (Parks & Recreation); Sheila Thibodeaux (Fire); Alexey Zalakov (Transit); James Graves (Fire); Cotina L. Smith (Fire, Prestige Motors of Asheville (Streets); Cynthia Messer (Sanitation); Andrea L. Griffin (Police) and Christopher Hess (Police). These claims have been referred to Asheville Claims Corporation for investigation.

The City was served with the following Complaint on August 12, 2011, which is generally described as follows: Buncombe County v. Ridgeline Reclamation Corp., City of Asheville, leinholder. The nature of the proceeding is a complaint for a tax foreclosure. This matter will be handled in-house.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 10:07 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – August 30, 2011 – 6:30 p.m.
UNC-Asheville, Wilma M. Sherrill Center

Community Meeting – North Asheville

Present: Vice-Mayor Brownie W. Newman, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Terry M. Bellamy

Vice-Mayor Newman opened the meeting, thanked Chancellor Anne Ponder for allowing the City Council to see their new Center, welcomed the audience and introduced City Council members.

With the consensus of City Council, Vice-Mayor Newman said that a resolution was necessary to allow alcohol at the Asheville Grizzlies Football Game Event 2 this weekend as follows:

**RESOLUTION NO. 11-183 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES FOOTBALL GAME EVENT ON SEPTEMBER 3, 2011**

Director of Building Safety Robert Griffin Roderick Simmons said that this is the consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Grizzlies Football Game Event 2 on September 3, 2011. He said their original request also included September 11; however, Memorial Stadium was not available on that date.

Asheville Grizzlies has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Asheville Grizzlies Football Game Event 2 and allow for consumption at this event.

The Asheville Grizzlies Football Game Event 2 will be held on Saturday, September 3, 2011, from 5:00 p.m. – 11:00 p.m., within the boundaries of Memorial Stadium as per the event area limits referenced on a site map.

This action has no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for Asheville Grizzlies

Con:

- Potential for public safety issues

City staff recommends City Council adopt the resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Grizzlies Football Game Event 2.

When Vice-Mayor Newman asked for public comment, no one spoke.

Vice-Mayor Newman said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 183. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34- PAGE 148**

Chancellor Ponder thanked City Council for coming to the new Wilma M. Sherrill Center, home of the North Carolina Center for Health & Wellness. She briefed Council on things going on at their campus, along with student initiatives and community partnerships.

Director of Transportation Ken Putnam provided Council with an overview of the community-based partnership to improve the walkability of Charlotte Street corridor.

Ms. Deborah Pirie spoke to Council about how the Charlotte Street Corridor Committee came into fruition. They have worked to achieve pedestrian and bike safety along Charlotte Street, particularly between Edwin Place and I-240. They surveyed residents, analyzed the survey, met with City staff to discuss the results with possible changes in the traffic plan with budgeting and traffic flow in mind, invited and met with businesses, formed a Streetscape Committee, and met again with City staff to discuss support and concerns. Concerns focused on traffic volume and safety of the middle lane. They also discussed various options of road diet, bike lanes, additional pedestrian crosswalks, bump-outs, etc – looking for the least expensive yet effective way to increase pedestrian safety and walkability on Charlotte Street while attending to business traffic needs. A particular issue was safety due to the number of power poles in the middle of sidewalks.

Ms. Billie Buie, representing a north Asheville group of residents and business owners, spoke to Council about making north Asheville streets safer and more attractive for pedestrians. Merrimon Avenue area residents also want to make Merrimon Avenue walkable. There are several sections on Merrimon Avenue that sidewalks are non-existent or are not safe. They have noticed foot trails next to sidewalks because people don't want to be so close to the rushing traffic on Merrimon Avenue. She asked for Council's assistance in providing sidewalks on Merrimon Avenue from downtown Asheville to Beaver Lake. She also spoke about the issue of utility poles in the middle of sidewalks, which are unsafe causing baby strollers and wheelchairs to go around the poles into the street. She requested that the City initiate a partnership with Progress Energy that when they move or relocate existing poles that they not be relocated in the existing sidewalks and when new poles are put up that they not be in the sidewalks. In addition, she expressed concern and assistance for sidewalks on Lakeshore Drive which has a lot of traffic.

Regarding power poles in sidewalks, Public Works Director Cathy Ball said that the Public Works Department is working with utility companies to address this issue. We are working (1) to amend the City's Right-Of-Way Ordinance to require all utility companies obtain a permit to replace a pole. This will allow our staff to work with them to provide handicap accessibility around the poles; (2) to amend our Standards & Specifications Detail Manual to require all intrusion into the sidewalk provide for ADA accessibility; and (3) on negotiating a contract with Progress Energy to repair sidewalk in over 200 locations where they are replacing poles. The agreement will specify that the City will provide ADA accessibility and Progress Energy will pay the cost of the repairs.

Mr. Putnam noted that the accessibility guidelines for pedestrian facilities in public right-of-way have been in draft format for over 20 years. The final draft, which was released on July 26, 2011, is now available for public review and comment until November 23, 2011. If all goes well, it is anticipated that the subject guidelines will become law during 2012. The City of Asheville has been using the draft guidelines for several years as best management practices. When they become law, then everyone including the various utilities will be subject to the requirements. Regarding sidewalks, the subject guidelines mandate that a minimum continuous width of 48 inches be maintained along the pedestrian access route section of a sidewalk. This requirement could generate the need for easements from affected property owners and staff would hope that those property owners would cooperate and grant the City an easement at no cost so that the monies can be used for actual construction.

Regarding sidewalks on Lakeshore Drive, Mr. Putnam said that included in the current fiscal year is a project to construct a short section of sidewalk along Lakeshore Drive from Merrimon Avenue to Mt. Vernon Circle at an estimated cost of $50,000. The design has been completed and staff is in the process of obtaining the necessary easements. Construction should be completed by June 30, 2011.

This project, when completed, will provide good connectivity from existing sidewalks in a well established residential neighborhood to existing sidewalks along Merrimon Avenue. In addition, staff is currently developing a project and/or projects along Lakeshore Drive from Lakeview Road to Mt. Vernon Circle for consideration in the FY 2012-13 and FY 2013-14 fiscal years. This section of sidewalk is identified as a needed linkage in the approved 1999 (updated 2005) Pedestrian Master Plan.

Vice-Mayor Newman then opened up the meeting for questions. Questions/comments responded to by City staff or Council members consisted of: how can citizens become involved in the Charlotte Street planning process; note that there are gas lines, waterlines, fiber optic lines, etc. underneath the sidewalks; what can residents do to facilitate sidewalks on Lakeshore Drive; has the City considered different mediums (like crushed gravel) other than concrete sidewalks; does maintenance of existing sidewalks take precedence over providing neighborhoods that have no sidewalks; request to work quickly on working with Progress Energy on power pole replacements; confirmation that once the ADA law takes effect that all utility companies must abide by it; need for a trash can at the Lakeshore Drive/Cherry Lane bus stop; request for a turn signal at Merrimon & Edgewood; request to raise the 4-inch recessed manhole on Kimberly Avenue; need maintenance of the Urban Trail; request to find Urban Trail pieces that were stored and now cannot be found; in our efforts to make Merrimon Avenue pedestrian and bicycle friendly, make sure cars can flow through the streets too; need for increased bike lanes as some end arbitrarily; request to review the noise ordinance to clearly define hours of night and day with noise limits, assign acceptable decibel limits, and clearly state nuisance noises; asked the City to consider rail service to Asheville; request to mandate developers to set aside money for sidewalks; residents can help the City in getting sidewalks by contacting property owners to give easements; request for City to meet with Fairway Advertising as they are willing to talk about relocating the digital billboard on Merrimon Avenue; why has the bus service on Merrimon Avenue not been changed from every hour to every 30 minutes as was proposed in the Transit Master Plan; vast overuse of fire trucks travelling to medical emergencies and suggestion to use a smaller vehicle; request fire trucks not use alarms through neighborhoods in early morning hours; congratulations for purchasing hybrid buses; request to have the AT&T box on the pole by St. Mary's Church removed as it takes up space on ½ of the sidewalk; request to remove graffiti on the AT&T box at the corner of Edgemont and Charlotte Street; suggestion that the City and/or the Chamber of Commerce consider bus service to the middle part of the state; and concern about bear problem in north Asheville.

Vice-Mayor Newman and Council members expressed their appreciation for the community involvement.

At 8:25 p.m., Vice-Mayor Newman adjourned the meeting.

Magdalen Bowlesson
CITY CLERK

MAYOR

Tuesday – September 13, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilwoman Manheimer gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF IRA B. JONES ELEMENTARY SCHOOL**

Mayor Bellamy recognized Mr. Denny Trantham, Executive Chef at The Grove Park Inn Resort & Spa; Ms. Susan Bowers, Child Nutrition Manager at Ira B. Jones Elementary School; Ms. Sarah Cain, Principal at Ira B. Jones Elementary School; Ms. Tara Jardine, AmeriCorps at Ira B. Jones Elementary School; and Ms. Nichelle Burroughs, Student Participant at Ira B. Jones Elementary School. She was pleased to recognize this team for their participation in the National Cook-Off Event at the American Culinary Federation National Convention under First Lady Michelle Obama's Let's Move Recipes for Healthy Kids Initiative.

**B. RECOGNITION OF A-B TECHNICAL COMMUNITY COLLEGE'S CULINARY TEAM**

Mayor Bellamy recognized Team members Stephen Hertz, Sidney Ann Caton, Tracy Williams, Jonathan Zetterholm; Team Captain Danny Schwaije; Team Coaches Frederick Snyder and Charles deVries; Associate Dean, Hospitality Education Sheila Tillman; and Chef Bronwen McCormick, Culinary Arts & Hospitality Department Chair. She was pleased to recognize the "Hot Food Team" for their silver medal in the American Culinary Federation Student Team Championship.

**C. PROCLAMATION PROCLAIMING SEPTEMBER 15 – OCTOBER 15, 2011, AS "HISPANIC HERITAGE MONTH"**

Mayor Bellamy proclaimed September 15 – October 15, 2011, as "Hispanic Heritage Month". She presented the proclamation to Ms. Yolanda Bopp and Ms. Christiana Glen Tugman from the Asheville Latin Americans Advancement Society. Ms. Bopp briefed City Council on some activities taking place during the month.

**D. PROCLAMATION PROCLAIMING SEPTEMBER 19-23, 2011, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"**

Mayor Bellamy read the proclamation proclaiming September 19-23, 2011, as "Minority Enterprise Development Week" in the City of Asheville. She presented the proclamation to Mr. James Lee, the City's Minority Business Plan Coordinator, who introduced the 2011 MED Week

Committee of WNC, consisting of Chair Hope Huskey, Vice-Chair Adrianne Gordon; Secretary Natalie Murdock; Treasurer Sherrene Swayney; and members Joseph Fox, Sharon Oxendine, Jill Sparks and Pam Lewis. Mr. Lee briefed City Council on some events taking place during the week.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON AUGUST 23, 2011; AND THE COMMUNITY MEETING HELD ON AUGUST 30, 2011**

**B. RESOLUTION NO. 11-184 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH ROGERS GROUP INC. FOR THE WATER RESOURCES ROAD RESURFACING PROJECT AT THE NORTH FORK AND WILLIAM DEBRUHL WATER TREATMENT PLANTS**

**ORDINANCE NO. 4008 - BUDGET AMENDMENT FOR THE WATER RESOURCES ROAD RESURFACING PROJECT AT THE NORTH FORK AND WILLIAM DEBRUHL WATER TREATMENT PLANTS**

Summary: The consideration of a resolution by City Council authorizing the City Manager to enter into an agreement with Rogers Group, Inc. in an amount not to exceed $399,812, for the Water Resources Road Resurfacing Project at the North Fork and William DeBruhl Water Treatment Plants; and a budget amendment, in the amount of $224,812, from savings in a N.C. Dept. of Transportation capital project that was completed under budget.

On August 12, 2011, the Water Resources Department issued a Request for Proposals (RFP) for the Road Resurfacing Project at the North Fork and William DeBruhl Water Treatment Plants. The scope of the project includes all labor, materials, and equipment required for: (1) removing existing damaged pavement, (2) adding a stone base, (3) asphalt paving, (4) milling, (4) adding speed bumps, (5) repairing damaged curbing, (6) thermoplastic striping, and (7) additional scope as needed. The project locations include the North Fork Water Treatment Plant in Black Mountain and the William DeBruhl Water Treatment Plant in Swannanoa.

On August 31, 2011, Water Resources received two (2) proposals for the project in response to the RFP. The RFP was posted on the Interactive Purchasing System and Water Resources websites, and Water Resources also directly solicited seven (7) companies including the Public Works Department. Companies responding were:

1. APAC-Atlantic, Inc. – Asheville, NC; $416,512.46 total bid
2. Rogers Group, Inc. – Hendersonville, NC; $415,879.82 total bid

The lowest responsible bidder, Rogers Group, Inc. has been selected for the project. The project budget will be for a not to exceed amount of $399,812. Since the total bid cost is higher than the anticipated project budget, Water Resources will work with Rogers Group to reduce the project scope in order to stay within the $399,812 project budget.

This project is part of City Council's strategic plan to maintain and improve city infrastructure and provide local companies with labor opportunities.

Pros:

- Approval of the project will allow Water Resources to complete necessary road repair at the North Fork and William DeBruhl Water Treatment Plants.
- The project will provide a local company with work through June 2012.

Cons:

- Additional funds will be needed from another capital project to cover the total bid cost.

Water Resources has a Road Resurfacing capital project in which $175,000 is currently budgeted for this project. The contract with Rogers Group, Inc. will be for a not to exceed amount of $399,812, even though their total bid is $415,879.82. Water Resources will reduce the project scope to stay within the not to exceed amount. A budget amendment in the amount of $224,812 is needed to increase the project budget in order to cover the additional funds needed. The additional funds needed for the project will be reallocated from an older N.C. Dept. of Transportation (NCDOT) project (Brevard Road from Sardis Road to the Parkway) that is completed and has the funds necessary for this project.

| | |
|---|---|
| Current Road Resurfacing Budget | $175,000.00 |
| Rogers Group, Inc. Bid | $415,879.82 |
| Reduction in Project Scope | $ 16,067.82 |
| Revised Project Budget (Not to Exceed) | $399,812.00 |

After this budget amendment, all funds will be expended in the aforementioned NCDOT Project.

City staff recommends City Council authorize the City Manager to enter into an agreement with Rogers Group, Inc. in an amount not to exceed $399,812.00 for the Water Resources Road Resurfacing at the North Fork and William DeBruhl Water Treatment Plants Project; and a budget amendment in the amount of $224,812 from savings in an NCDOT capital project that was completed under budget.

**RESOLUTION BOOK NO. 23 – PAGE 151**
**ORDINANCE BOOK NO. 27 - PAGE 143**

**C. RESOLUTION NO. 11-185 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SUBLEASE AGREEMENT WITH THE STATE OF NORTH CAROLINA FOR REAL PROPERTY LOCATED AT ONE PAGE AVENUE, SUITE 116, ASHEVILLE N.C., WITHIN THE HISTORIC GROVE ARCADE BUILDING FOR THE RENAISSANCE COMPUTING INSTITUTE AT UNC-ASHEVILLE (RENCI)**

Summary: The consideration of a resolution authorizing the City Manager to execute a Sublease Agreement between the City of Asheville and the State of North Carolina for real property located at One Page Avenue, Suite 116, Asheville, N.C., within the historic Grove Arcade building for the Renaissance Computing Institute at UNC-Asheville (RENCI).

On June 1, 2009, the City of Asheville entered into a lease with the Grove Arcade Public Market Foundation, Inc. for office space in Suite 116 at the Grove Arcade. As part of the partnership outlined in the Memorandum of Understanding between the City of Asheville and the UNC Asheville, this space is utilized by the Renaissance Computing Institute at UNC-Asheville (RENCI) for a Downtown Engagement Site. Per the arrangement, RENCI covered all costs associated with the occupancy of the leased space.

On behalf of UNC- Asheville - RENCI, the State of North Carolina has requested a formal sublease between the City and the State, applicable through the remainder of the lease term, expiring May 31, 2012. The State of NC will continue to be responsible for costs related to the occupancy, including rental at a rate of $2,908.51 per month, utilities, and janitorial services. As standard in State leases, the City (as Sublessor) is responsible for maintaining the premises in good repair and condition, including the maintenance and repair of the heating and cooling system.

This action complies with the City Council Strategic Operating Plan by supporting an ongoing collaborative partnership between the City of Asheville and the RENCI at UNC-Asheville.

Pros:

- Optimum location for Downtown Engagement Site
- Supports RENCI at UNC Asheville partnership
- All rent payment, utilities and janitorial costs are fully paid by the State of NC - RENCI

Con:

- The City is responsible for some maintenance and repair.

There is no immediate financial impact to the City. The State of NC (RENCI) will continue to reimburse the City on a quarterly basis for the full cost of the rental. The estimated replacement cost of the HVAC unit is $5,000 and in the event it should fail during the remainder of the term, the City would be responsible for the replacement.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute the sublease agreement with the State of North Carolina for Suite 116 at the Grove Arcade.

**RESOLUTION BOOK NO. 34 – PAGE 153**

**D. ORDINANCE NO. 4009 - ORDINANCE ADOPTING THE 2012 NORTH CAROLINA FIRE CODE AND AMENDING THE 2002 CITY OF ASHEVILLE FIRE PREVENTION CODE**

Summary: The consideration of adoption of an ordinance adopting the 2012 North Carolina Fire Code and amending the 2002 City of Asheville Fire Prevention Ordinance.

The State of North Carolina 2012 Fire Code became effective on September 1, 2011. This will require the City of Asheville to update its existing 2002 Fire Prevention Ordinance. The following is an analysis of changes from the City of Asheville 2002 Fire Prevention Ordinance to the proposed 2012 State of North Carolina Fire Code.

**Section 6-1. Fire Prevention Code Adopted**.

(a) An ordinance of the City of Asheville adopting a Fire Prevention Code, regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises in the City of Asheville; providing for the issuance of permits and collection of fees therefrom; repealing Ordinance No. 2888 of the City of Asheville and all other ordinances and parts of the ordinances in conflict therewith.

(b) In the event of conflicts with North Carolina Fire Prevention Code and this chapter, the more restrictive provisions shall prevail as allowed by GS 143-138(e).

*The preamble was edited using the model ordinance language found in the International Fire Code.*

**Section 6-2:** *The 2012 NC Fire Code is established as the base document for our city ordinance.*

City of Asheville amendments to the State Fire Code:

**104.13.1 Public Street and Sidewalk Closures.** The temporary or permanent closure or obstruction of any public street or sidewalk must be approved by the *fire code official* prior to such

closure or obstruction placement, when such closure or obstruction would affect life safety or fire apparatus response.

*Section edited to clarify when AFD approval of street closure permits is and is not required, such as only in public safety matters.*

**105.1.1 Permits required.** *This section was re-codified in the base NC Fire Code document, so this rewrite reflects those changes made in section numbering. Additionally the permit expirations have been changed to match the NC prescribed fire inspection schedule.*

**105.6.47 Road and Public Way Obstructions.** An operational permit is required for the temporary or permanent obstruction of any fire apparatus access road or public way when such obstruction, in the opinion of the *fire code official*, would affect life safety, exit discharge, or fire apparatus use.

*This is a new section that permits closures of private streets and sidewalks. It mirrors the closure process used for city maintained public streets and sidewalks.*

**109.3.4 Appeals of civil penalties.** *This is a new section intended to clarify City Policy 51 on appeals of civil penalties. It also clarifies that appeals on other matters are the purview of the NC Office of State Fire Marshal.*

**503.4.1.1 Responsibility for Vehicles.** The registered owner shall be responsible for their vehicle which obstructs an apparatus access road. Vehicles may park no more than 30 minutes for loading and unloading purposes and the vehicle is constantly attended by licensed driver. The use of a fire lane for loading and unloading shall comply with NC General Statute 20-162(b).

*This last sentence was added for clarity.*

**503.4.1. Traffic calming devices.** Traffic calming devices shall be prohibited, unless approved by the fire code official.

*This is a new section to apply city standards to private streets and parking lots.*

**506.1 Where required.** The *fire code official* is authorized to require a key box to be installed in an *approved* location. The key box shall be of an approved type, listed in accordance with UL 1037, and shall contain keys to gain necessary access as required by *the fire code official.*

*Amended Knox Box section related to a NC DOI appeal; specific local adoption is required.*

**511.1 Nuisance fire alarms.** *Section deleted, and an edited section added at 401.9. The section is relocated for clarity and placed adjacent to the same section as false alarms.*

**D105.1 Where required.** Approved aerial fire apparatus access roads shall be provided for any building with an occupied floor located more than 55 feet (16 764mm) above the lowest level of fire department vehicle access.

*Section was amended to make it applicable only to mid-rise and high-rise buildings.*

**Section 6-2(k)** Adoption of Appendix F

**Appendix F Hazard Ranking.** *The information in this appendix is intended to be a companion to the specific requirements which regulate the storage, handling and use of all hazardous materials classified as either physical or health hazards. This appendix lists the various hazardous mate-*

*rials categories that are defined in the code, along with the NFPA 704 hazard ranking for each. This assists customers in completing their hazardous materials placard.*

**Section 6-2(l)** Adoption of Appendix J

**Appendix J Building Information Sign.** *This provides design, installation and maintenance requirements for a Building Information Sign (BIS), a fire service tool to be utilized in the crucial, initial response of fire fighters to a structure fire. The BIS placard is designed to be utilized within the initial response time frame of an incident to assist fire fighters in their tactical size-up of a situation as soon as possible after arrival on the scene of a fire emergency. The BIS design is in the shape of a fire service Maltese Cross symbol and includes five spaces (the four wings plus the centerpiece of the cross symbol) in which information is placed about the tactical considerations of construction type and hourly rating, fire protection systems, occupancy type, content hazards and special features which could affect tactical decisions and operations. Section J101.8 (2) was modified from annual inspection to the frequency required by the NC OSFM administrative requirements found in section 106.*

This action complies with the Strategic Operating Plan by making Asheville one of the safest cities, based on appropriate metrics as compared with similarly sized cities.

Pros:

- Consistency with 2010 NC Fire Code.
- Clarifies City of Asheville Fire Prevention Ordinance
- Increased firefighter and community safety.

Con:

- None identified

The updating of the City Fire Prevention ordinance and adoption of the 2012 NC Fire Code will have no fiscal impact.

As our local ordinance needs to reflect state law, City staff recommends that City Council adopt the 2012 NC Fire Code and the associated amendments to the City of Asheville Fire Prevention Ordinance.

**ORDINANCE BOOK NO. 27 – PAGE 145**

**E. RESOLUTION NO. 11-186 - RESOLUTION ADOPTING THE BUNCOMBE COUNTY HAZARD MITIGATION PLAN UPDATE**

Summary: The consideration of a resolution authorizing the City Manager to sign the acceptance of the Buncombe County Hazard Mitigation Plan update.

The City of Asheville is an agency in the Buncombe County Hazard Mitigation Plan. Buncombe County Emergency Management is the lead organization for the declaration process in requesting and receiving State and Federal funds for disaster assistance. This plan involves all jurisdictions in Buncombe County including the City of Asheville, Town of Montreat, Town of Black Mountain, Town of Woodfin, Town of Weaverville and the Town of Biltmore Forest. On August 1, 2011 at the Buncombe County EOC located at 164 Erwin Hills Rd. a public hearing was held for public review and comment to the plan.

The plan addresses City of Asheville needs through risk assessment and multiple map modeling scenarios. City Departments address hazards, mitigation, sheltering and public safety through education, enforcement and community outreach events. The City is subject to flooding events, severe weather, and other adverse conditions. The Department of Public Works, through flood plain mitigation and plan review, ensures that the City of Asheville remains in compliance

the FEMA National Flood Insurance Programs rules. This allows the businesses and residences in the flood prone areas to purchase flood insurance at reduced rates.

The plan is part of Section 322 of the Federal Disaster Mitigation Act of 2000 which states that local governments must develop an All-Hazards Mitigation Plan in order to be eligible to receive future Hazard Mitigation Grant Program Funds and other disaster-related assistance funding and that said Plan must be updated and adopted within a five year cycle.

This action complies with the Strategic Operating Plan by making Asheville one of the safest cities, based on appropriate metrics as compared with similarly sized cities.

Pros:

- This plan allows the City to receive disaster assistance funds
- This plan continues following the National Flood Insurance Program guidelines
- Firefighter and citizen safety will be enhanced.

Con:

- None identified

The Buncombe County Hazard Mitigation Plan will have no additional fiscal impact. The City of Asheville will continue to support the Nation Flood Insurance Program through plan review, enforcement and education.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign the Buncombe County Hazard Mitigation Plan update.

**RESOLUTION BOOK NO. 34 – PAGE 154**

**F. RESOLUTION NO. 11-187 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY TO OVERSEE THE ADMINISTRATIVE COORDINATION OF THE COLLABORATIVE COMMUNITY CRIME PREVENTION PROJECT, CHANGING TOGETHER**

**ORDINANCE NO. 4010 - BUDGET AMENDMENT FOR THE ADMINISTRATIVE COORDINATION OF THE COLLABORATIVE COMMUNITY CRIME PREVENTION PROJECT, CHANGING TOGETHER**

Summary: The consideration of a resolution authorizing the City Manager to execute on behalf of the City of Asheville an agreement with Buncombe County in which the City will act as the coordinating agency for the Changing Together community project aimed at reducing gang violence through strategic prevention, intervention and suppression; and a budget amendment in the Grant Fund in the amount of $63,000 for Governor's Crime Commission grant revenue to be received from the County.

Changing Together is a comprehensive and collaborative community project with participation from law enforcement, the District Attorney's Office and numerous non-profit and social service agencies throughout Asheville and Buncombe County. It was formed to address the issue of escalating gang activity and violence in the area and chosen by the Governor's Crime Commission (GCC) as a Tier 1 site for implementation of the Focused Deterrence Model (High Point Model) in fiscal year 2009.

Currently, the County receives grant funding from the Governor's Crime Commission to provide direct services to people involved with gangs and/or violent crime. Prevention and intervention programs are also coordinated for youth at-risk of becoming gang involved. The funding pays for the coordination of Changing Together, which includes a salary for a program

coordinator, one case manager and one ten hour per week administrative support person. For fiscal year 2011-12, the grant is $100,000. These positions are currently housed at the Mediation Center, a partnering agency of Changing Together.

If the agreement is approved, the program coordinator and part-time administrative support positions will be overseen by the community relations division of the city manager's office with associated funding from the County in an amount not to exceed $63,000. This figure also reflects ancillary administrative program costs. The remainder of the grant will fund formal and informal service support systems and a case manager. These components will be managed by Buncombe County Human Services through service contracts or the direct provision of services.

The County is requesting the City assume responsibility for administrative coordination of Changing Together. One factor prompting the request is that the Governor's Crime Commission emphasized a preference for the coordination to be located in a municipality because of the stability it provides due to organizational capacity and infrastructure. The Buncombe County District Attorney's Office and the Buncombe County Sheriff's Office are supportive of this restructuring of program coordination responsibilities.

This action complies with the City Council Strategic Operating Plan in the Core Focus Area of Safety. This partnership will continue to assist the Asheville Police Department in its work to successfully work with youths at risk of gang exposure and as a strategy to improve safety in neighborhoods with high crime.

Pros:

- Through initiatives such as West Riverside Operation Weed and Seed, the City of Asheville has impactful experience administering federal and state grants focused on community-based crime prevention.
- Administrative coordination by the City creates an opportunity for seamless crime prevention coordination with the community and greater flexibility in adapting the Focused Deterrence function of Changing Together to meet future crime trends.

Cons:

- Public perception of program effectiveness may by associated with only the City when it is actually a collaboration between the community, City of Asheville, Buncombe County and other state and federal agencies.
- Additional administrative resources related to contract management and accounts payable will be required.

Buncombe County has agreed to provide the required grant match of $33,000 for this fiscal year in addition to managing funds budgeted for the case manager position in the amount of $37,000. With revenue in the amount of $63,000 received from the County, the City will manage funds budgeted for ancillary costs, the program coordinator and administrative support position. All positions will be contract employees in order to re-evaluate available state funding at the conclusion of the current fiscal year. Other than the time commitment related to administrative oversight, there is no hard cost impact on the current year budget.

Staff recommends City Council adopt the resolution authorizing the City Manager to execute, on behalf of the City of Asheville, the agreement with Buncombe County to assume administrative coordination of Changing Together; and the accompanying budget amendment in the Grant Fund in the amount of $63,000. The recommendation received unanimous approval by the Public Safety Committee at the August 16, 2011 meeting.

Assistant City Manager Jeff Richardson highlighted this partnership opportunity with Buncombe County.

Mayor Bellamy acknowledged the wonderful partnership in that the City has been at the table since the beginning. For the City being in this position says a lot about the collaboration that has been developed.

**RESOLUTION BOOK NO. 34 – PAGE 155**
**ORDINANCE BOOK NO. 27 - PAGE 154**

**G. RESOLUTION NO. 11-188 - RESOLUTION SETTING A PUBLIC HEARING ON SEPTEMBER 27, 2011, FOR THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED AT 55 PINEY MOUNTAIN ROAD – BELLE VISTA RETIREMENT**

Summary: The consideration of a resolution fixing the date of a public hearing on September 27, 2011, for the voluntary annexation of property located at 55 Piney Mountain Drive – Bella Vista Retirement.

Asheville Retirement Residence, LLC has petitioned the City of Asheville for the annexation of one (1) lot located at 55 Piney Mountain Drive containing a total of 13.52 acres on which was recently constructed a 120 suite retirement residence. The property is contiguous to the primary corporate limits of the City of Asheville. The area is subject to the standards for annexation of contiguous areas contained in NCGS 160A-31.

Pursuant to NCGS 160A-31, such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request.

The next step in this process is for the Asheville City Council to fix the date for the public hearing on this matter. Should the City Council decide to proceed with this request, the effective date for the annexation would be November 30, 2011.

Pros:

- Provides for the orderly growth of the City and the tax base through the acceptance of appropriate areas into the corporate limits where owners desire annexation.
- Complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas.
- Allows for service provisions for a new retirement community that would benefit from an urban level of service.

Con:

- Marginal costs for patrol.

The property located at 55 Piney Mountain Drive is valued at $12,813,700. This property is currently serviced by the City of Asheville Fire Department under the Haw Creek Fire District agreement. As such, the City receives a share of the Haw Creek Fire District property tax revenue based on the property's value. If the property were to remain outside the City, the City would receive $11,532 in revenue annually from the Haw Creek Fire District property tax. Once the property is annexed, it will no longer be subject to the 9-cent Haw Creek Fire District tax; instead the property will be subject to the City of Asheville's 42 cent property tax rate. Therefore, the City will receive $53,817 annually in property tax revenue once the property is annexed. Thus, the net tax revenue gain from the annexation is $42,285. As noted above, cost impacts from this voluntary annexation are minimal.

City staff recommends that City Council adopt the resolution setting the date of September 27, 2011, for a public hearing on the annexation petition.

**H. ORDINANCE NO. 4011 - BUDGET AMENDMENT FOR PURCHASE OF AN EXTRACTOR AND REMITTANCE PROCESSOR FOR CUSTOMER SERVICES**

Summary: The consideration of a budget amendment in the Water Resources Operating Fund, in the amount of $130,000, for the purchase of an extractor and remittance processor for Customer Services.

The Customer Services Division currently uses two separate machines, a remittance processor and an extractor, to process approximately 1,250 utility bills daily. Utility Billing Specialists receive utility bill payments at City Hall, open them using the extractor, and scan the payments into the remittance processor for posting to the customer's account. The entire process is handled in-house by Water Resources staff. The current machines are approximately seven years old and break down on a regular basis. Since the useful life for this equipment is a maximum of five years, then it is well past time to replace them.

Water Resources consulted with the Finance Department on the decision to lease or purchase new equipment, and it makes more financial sense to purchase it. Once the budget amendment is approved and processed, the Purchasing Division will assist in the procurement of the new extractor and remittance processor.

This project is part of City Council's strategic plan to improve city infrastructure and to operate at the highest levels of fiscal responsibility.

Pro:

- Customer Services will have new equipment that is more efficient and reliable than the existing extractor and remittance processor.

Con:

- Customer Services will continue to use the older equipment, which is inefficient and breaks down on a regular basis.

The Water Resources Department does not have a budget in place for the purchase of the Mail Processing Equipment. Since this is a single year project, the budget amendment will create the budget in the Water Resources Operating Fund. The funds needed for this purchase in the amount of $130,000 will be transferred from an older N.C. Dept. of Transportation (NCDOT) project (Brevard Road from Sardis Road to the Parkway) that is completed and has the funds necessary for this project.

| | |
|---|---|
| Amount in Completed NCDOT Project | $354,812.48 |
| Amount Needed for Mail Processing Equipment | $130,000.00 |
| Amount Remaining in NCDOT Project | $224,812.48 |

The amount remaining in the older, completed NCDOT Project will be reallocated to other capital projects as the need arises. Staff will seek Council approval on any future reallocation of these funds.

City staff recommends City Council authorize a budget amendment in the Water Resources Operating Fund, in the amount of $130,000, for the purchase of an extractor and remittance processor for Customer Services.

**ORDINANCE BOOK NO. 27 – PAGE 156**

**I. RESOLUTION NO. 11-189 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MOTOROLA INC. FOR**

**RADIO SYSTEM MAINTENANCE FROM AUGUST 1, 2011 THROUGH JULY 31, 2012**

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with Motorola, Inc. to provide maintenance coverage for the City's radio system.

Motorola, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of August 1, 2011, through July 31, 2012, has remained the same as last year's cost.

The renewal agreement reflects an annual charge of $142,877.40 and covers additional equipment purchased by the City to equip new vehicles and replace broken equipment. The agreement also covers infrastructure that has come out of the installer's warranty during the past year.

This action complies with City Council's Strategic Operating Plan of partnerships to improve critical services / infrastructure. These partnerships also help the City recoup some of their investment in the system infrastructure through fees collected for use of the system.

Pros:

- The primary benefit of this contract is to keep the City's radio system reliable and operational for public safety officers.
- By keeping the radio system in optimal condition the City is also able to provide communication services to several outside agencies, thereby improving interagency communications.

Cons:

- None noted.

Funding for this contract was appropriated in the FY 11/12 budget process.

City staff recommends the adoption of the resolution for radio maintenance coverage for the term of August 1, 2011 through July 31, 2012.

**RESOLUTION BOOK NO. 34 – PAGE 159**

**J. RESOLUTION NO. 11-190 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE EXISTING AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES FOR THE FLOOD MITIGATION EFFORTS ASSOCIATED WITH THE LAKE CRAIG PROJECT**

**ORDINANCE NO. 4012 - BUDGET AMENDMENT FOR THE FLOOD MITIGATION EFFORTS ASSOCIATED WITH THE LAKE CRAIG PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to modify an existing agreement with the N.C. Dept. of Environment & Natural Resources (NCDENR) to supplement the current contract by an additional $1,090,139 in order to complete Phase I of the Lake Craig Project; and a budget amendment in the amount of $374,251 to appropriate additional Senate Bill 7 funding received from NCDENR.

The Hurricane Recovery Act of 2005 (Senate Bill 7) allocated funds for planning and implementation of projects to aid in flood damage reduction for North Carolina communities

hardest hit by the 2004 hurricane season. Through a study completed by Brown and Caldwell, the Lake Craig Project has shown potential to provide significant flood reduction benefits. The flood control features of the project include stream relocation and restoration, removal of floodplain fill and flood bench restoration, and the evaluation of the existing dam.

On May 15, 2007, City Council approved a resolution allowing the City Manager to enter into the following three contracts with NCDENR:

1) $2,500,000 for a three phase flood damage reduction measure which institutes a watershed-wide program for flood damage reduction in the Swannanoa
2) $2,000,000 for acquiring property that is prone to flooding
3) $75,000 to work with the Army Corps of Engineers to develop an emergency flood preparedness plan for Biltmore Village

The City did not utilize all the funds for acquisition of property, $715,888 is remaining. This $715,888 will be re-allocated and additional NCDENR (Senate Bill 7) funds in the amount of $374,251 has been approved for the flood damage reduction measures contract. The $1,090,139 supplements the existing NCDENR contract ($2,500,000) for a new total amount of $3,590,139.

On May 26, 2009, by Resolution No. 09-108, the City Manager was authorized to enter into a Feasibility Cost Share Agreement for the Swannanoa Flood Risk Management Project with the Army Corps of Engineers to provide professional services for a feasibility study for reducing flood damage in the Swannanoa River Watershed. The CORPS continues to be involved with this project.

On June 28, 2011, City Council approved the City Manager to enter a contract with McGill Associates to perform the engineering services necessary to provide flood mitigations to the properties down stream of the Lake Craig Dam which will include the evaluations of the existing dam. The Lake Craig Project was the highest priority in the Swannanoa Flood Risk Management Project which was accepted by City Council on May 10, 2011. McGill Associates are also providing engineering services associated with the improved roadway connections to the John B. Lewis Soccer Complex and provide a much needed connection to the City of Asheville water system.

These funds will be in addition to the $2.5 Million that have been made available for the City to perform flood mitigation work. The funds available for the completion of the engineering services for the Swannanoa Flood Risk Management project and to complete Phase I of the Lake Craig Project total $3,590,139.

This action complies with the City's plans and commitments to continue to administer $2.5M of Senate Bill 7 funding consistent with a contract executed with the N.C. Division of Water Resources on April 1, 2007. In addition, this project has complied with the Council's Strategic to provide a safe community for our citizens.

Pros:

- Implements the priority objective of the Swannanoa Flood Risk Management Project
- To continue to work with state, local and federal partners on a flood mitigation plan
- Priorities are set for expending the remainder of state flood mitigation funding
- This funding will allow the completion of the construction phase of the Lake Craig project

Cons:

- Construction/rehabilitation of the dam will require the involvement and funding of the US Army Corps of Engineers or the North Carolina Division of Water Resources.

The City has currently budgeted $1,263,206 for the engineering services necessary to complete Phase I of the Lake Craig Project and the Azalea Road capital improvement project. Funding for the engineering services contract has come from a combination of NCDENR Senate Bill 7 money and capital funds, made available from the water fund for work associated with the installation of water line infrastructure as permitted by state statue, which are already budgeted in the Azalea Road capital improvement project. The reallocation of the $715,888 and the additional $374,251 (total $1,090,139) from NCDENR Senate Bill 7 will allow the city to finalize the design and complete the construction of Phase I of the Lake Craig Project for flood mitigation

Staff recommends City Council approve a resolution authorizing the City Manager to modify an existing agreement with NCDENR to supplement the current contract by an additional $1,090,139 in order to complete Phase I of the Lake Craig Project; and a budget amendment in the amount of $374,251 to appropriate additional Senate Bill 7 funding received from NCDENR.

Mayor Bellamy was pleased that the City received these funds, especially during times of budget cuts. The State has recognized this is a good investment for a comprehensive project.

**RESOLUTION BOOK NO. 34 – PAGE 160**
**ORDINANCE BOOK NO. 27 – PAGE 158**

**K. ORDINANCE NO. 4013 - BUDGET AMENDMENT FOR THE PURCHASE OF LIFECYCLE REPLACEMENTS FOR COMPUTERS AND RELATED EQUIPMENT**

**RESOLUTION NO. 11-191 - RESOLUTION AUTHORIZING THE REIMBURSEMENT OF THE CITY FROM PROCEEDS OF THE FINANCING FOR PROJECT EXPRESSES INCURRED PRIOR TO THE EXECUTION OF THE INSTALLMENT PURCHASE CONTRACT**

**RESOLUTION NO. 11-192 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INSTALLMENT PURCHASE CONTRACT FOR THE EQUIPMENT**

Summary: The consideration of a budget amendment, in the amount of $350,000 from debt proceeds, for the purchase of lifecycle replacements for computers and related equipment; a resolution authorizing the reimbursement of the City from proceeds of the financing for project expenses incurred prior to the execution of the installment purchase contract; and a resolution authorizing the City Manager to enter into an installment purchase contract for the equipment.

In previous years, the City of Asheville has used an operating lease for computer equipment. This offered the operational benefit of a lifecycle replacement for computers every four years, which allowed for more reliable computing for employees. However, based on financial analysis of the operating lease rebid process, staff recommends moving away from the operational lease model and purchasing the equipment with debt proceed for several reasons. First, it will cost the City 14-30% less to purchase the equipment with debt proceeds than to lease it over the useful life of the equipment. In addition, when computers are purchased rather than leased, an extension of the lifecycle is at zero cost because the City owns the equipment as opposed to leasing it.

The proposed purchase of the computer equipment would be from State and other authorized contracts. To execute the purchase, staff is asking for City Council consideration of:

1) A budget amendment from debt proceeds in the amount of $350,000 to allocate funding for the project.

2) A reimbursement resolution allowing the City to move forward with the project and reimburse its accounts upon the issuance of the debt. When the FY 2011-12 budget was adopted, staff had not finalized its plan to purchase rather than lease computers, therefore only the operational lease costs were included in the adopted budget, not the purchase price. The money that was budgeted for the remaining operational lease payments will be redirected to pay debt service on the financing.

3) A resolution authorizing the City Manager to enter into an installment purchase contract in an amount not to exceed $350,000 to finance the purchase of the replacement equipment.

This action supports the City Council's strategic goal to operate the City to the highest levels of fiscal responsibility by making smart investments that result is lasting returns.

Pros:

- Continue to offer the lifecycle replacement, allowing for more reliable computing for employees
- Save between 14-30% over the life of the equipment

Cons:

- Because the deferral of lifecycle computer replacements would be at zero cost in the future, several difficult budget years in a row could create a situation where employees have old, unreliable computers, creating a service impact.

The FY 2011-12 adopted budget included $104,196 in the Information Technology Services departmental budget to pay the operational lease on the computers and related equipment that are set to be replaced in the current fiscal year. The City will pay approximately $52,098 between July 1 and the time that the operational lease payment ends. The remaining funds will be used to pay the annual debt service on the amount up to $350,000 borrowed for this purchase. Over the useful life of the equipment, staff estimates that purchasing the equipment will save14-30% over leasing the equipment.

City staff recommends that City Council authorize a budget amendment, in the amount of $350,000 from debt proceeds, for the purchase of lifecycle replacements for computers and related equipment and approve the reimbursement resolution and the resolution authorizing an installment purchase contract.

**ORDINANCE BOOK NO. 27 – PAGE 160**
**RESOLUTION NO. 11-191 - RESOLUTION BOOK NO. 34 – PAGE 161**
**RESOLUTION NO. 11-192 - RESOLUTION BOOK NO. 34 – PAGE 162**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. EMERGENCY MANAGEMENT PLAN UPDATE

Assistant Fire Chief David McFee said that our Emergency Plan is professionally developed, was updated in 2010, is comprehensive, and is a living document and developed to be easily updated.

For major emergencies and disasters, our plan is (1) designed to address any emergency or disaster; and (2) gives guidance to Council, staff and community fore preparedness, response, mitigation and recovery. Numerous annexes within our plan address more specific events such as radiological, terrorism and hazard materials release.

For flooding, our plan in action is (1) before or early onset, we warn, evacuate, and disseminate public information; (2) during a flood, we give direction and control and issue an emergency proclamation; and (3) after a flood, recovery.

Another tool available is the City of Asheville Elected Officials Guide to Emergencies and Disasters. The condensed guide contains disaster declarations, preparedness, response, recovery, mitigation and media guide.

Also included in our plan is a fuel conservation plan. We are participating in the Local Energy Assurance Project (LEAP). The Land-of-Sky Regional Council is our partner in this Project. It's made up of 22 local entities across our region. Its focus is (1) building regional energy assurance capabilities to allow counties/cities to better prepare for a fuel shortage or disaster; and (2) coordinating and communicating state-wide with one another on energy security, reliability, and emergency response issues. Its objectives are (1) strengthen and expand local government energy assurance planning and resiliency; and (2) reduce the impacts from energy supply disruptions such as premature budget depletion resulting in the inability to provide services.

In response to Councilman Davis, Mr. McFee felt that the Land-of-Sky has been trying to keep all 22 entities in the project and felt they are doing a good job in going in the right direction.

Mr. McFee responded to Councilman Smith regarding how fuel will be set aside for emergency services and in the event of a fuel shortage if there is any contingency for fuel for food distribution.

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING FOR SKYLOFTS/ALEXANDER DRIVE PROJECT**

**ORDINANCE NO. 4014 - ORDINANCE TO AMEND THE CONDITIONAL ZONING FOR SKYLOFTS/ALEXANDER DRIVE PROJECT**

Urban Planner Julia Fields said that this is the consideration of an ordinance to amend the conditionally zoning of Skylofts/Alexander Drive Project. This public hearing was advertised on September 2 and 9, 2011.

Ms. Fields said that on June 27, 2006, the Asheville City Council reviewed and unanimously approved the conditional zoning (RM16 CZ) of 4.59 acres of property located off of Carroll Drive and Alexander Drive in order to allow for the construction of a 69-dwelling unit development, the Skylofts of Asheville. Subsequent to this approval and receipt of permits, two of the proposed eight buildings were constructed and units sold. The property then suffered during the recession and a foundation for a third building was in place at the time of foreclosure on the development.

A new developer, Progressive Consultants, LLC, has obtained the property containing the foundation for the third building ("Unit C") and the property across (to the south) Alexander

Drive. Given changes to the market, the developer wishes to complete the project with some amendments to the plan. For purposes of analysis, the entire Skylofts development has been reviewed although the amendment would only apply to the portion controlled by the new development team.

The new proposal would contain fewer buildings (seven vs. eight) but seven additional units (76 vs. 69) with more small units added. Up to 77 units would be allowed on the site under the zoning. The other significant change is that parking for buildings D, E, F, and G would become surface parking as opposed to the primarily structured parking that was to be provided. Because of the parking change, the building height is reduced in those buildings that are south of Alexander Drive. The existing and proposed heights are as follows: Building A - 28' 9/5"; Building B – 39' 5.5"; Building C – 39' 5.5"; Buildings D-G – 29' 10". The impervious surface area for the development will also be reduced from an originally proposed total of 1.89 acres to 1.78 acres. The proposed unit mix is as follows:

- Building A – 3 – 1 Bedroom; 3 – 2 Bedroom
- Building B – 3 – 1 Bedroom; 6 – 2 Bedroom
- Building C – 3 – 1 Bedroom; 6 – 2 Bedroom
- Buildings D- F – 4 – 1 Bedroom; 7 – 2 Bedroom; 1- 3 Bedroom
- Building G – 8 – 1 Bedroom; 7 – 2 Bedroom; 1 – 3 Bedroom

Although for purposes of City review there is no distinction, the developer is proposing to lease the new units as opposed to selling them, again reflecting current market conditions. Landscaping is proposed to be provided in accordance with the original conditional zoning approval.

The developer is proposing to complete the street and storm drainage repair work left incomplete by the previous developer. It is also proposed that the partially constructed parking deck to the east of Building A would be completed to provide six additional spaces at the time Building C is constructed.

The developer is working with the owners of units in Buildings A and B concerning the development of Building C which is restricted as part of the Skylofts Homeowner's Association (HOA) documents as to the number of rental units allowed.

Although this issue does not relate to City regulations, representatives of the Skylofts Homeowner's Association (HOA) and the developer agreed to (by letter dated September 13, 2011) to the following conditions: (1) stucco all exterior block walls and paint with color approved by the Skyloft HOA; (2) insure that the remaining foundation meets minimum building safety requirements; (3) paint and secure the existing elevator building; (4) cut all exposed plumbing down to ground level; (5) provide monthly landscape service; (6) remove all existing fencing and debris; and (7) plant perimeter landscaping as required under previous plan. The developer has committed to doing these items within 60 days after final permit approval by the City.

The staff strongly recommends that the City condition approval of any amendments on some improvements to the area surrounding Building C being provided if Building C is not constructed at the same time as the other buildings. The developer is willing to:

- Stucco all exterior block walls and paint with color approved by the HOA.
- Insure that the remaining foundation meets minimum building safety requirements.
- Paint and secure the existing elevator building.
- Cut all exposed plumbing down to ground level.
- Provide monthly landscape service.
- Remove all existing fencing and debris.

- Plant perimeter landscaping as required under previous plan.

If Building C is not constructed along with Buildings D-G, the staff recommends that any approval be conditioned on those items noted above being met within 60 days after final permit approval from the City

The developer proposes to maintain the originally approved 10% affordable condition on the project. There are four units in place in Buildings A and B. The developer will provide four additional units in the remainder of the development. The developer also plans to provide the previously required bus shelter at the corner of Martin Luther King, Jr. Drive and Alexander Drive.

The developer held a meeting with residents of the area on September 1, 2011, to discuss the project and to listen to neighborhood concerns. Most of the comments raised were related to the concerns of the homeowners in Buildings A and B.

At their meeting on August 15, 2011, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning amendment and made a positive recommendation (with conditions) that the project be forwarded to the Asheville City Council. This amendment did not have to be reconsidered by the Planning and Zoning Commission because the changes were relatively minor in nature.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance. The existing site plan shows compliance with most all of the City's development standards and the applicant is working on a resubmittal to address the comments of the Technical Review Committee.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The applicant has met all applicable provisions of the hillside regulations. The applicant has worked to create a design minimizing grading activity and impervious surface on the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The use of property that surrounds this site is varied. There is another multi-family housing development to the west of the site. The applicant is proposing buffering or other landscaping in compliance with City of Asheville standards along all property lines in the development.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The East End Valley Street area contains an array of building types and uses with varying with varying gross floor areas, densities, and elevations to existing structures. The developer is proposing to maintain an architectural design consistent with the existing Skylofts buildings.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The proposed development proposed development supports the following goals/strategies of the *Asheville City Development Plan 2025:*
   - Locating development in areas where infrastructure exists and can easily be provided.
   - Finding appropriate opportunities to establish transit supportive densities (8-16 units per acre) and facilities.
   - Promoting infill developments proximate to the Central Business District and in developed areas that can support increased density in development.
   - Providing affordable housing.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The proposed development is within a block of an existing transit stop and proposes to provide a shelter at this location. The original developer improved the existing water line along Alexander Drive.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The City of Asheville Traffic Engineer has indicated that the roads that will be accessed by this development are sufficient to handle any traffic generated. The provision of additional on-street parking along Alexander should assist in calming traffic along Alexander.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:
- Completes a development that had been stopped due to economic conditions.
- Provides for infill development in an area in close proximity to downtown and infrastructure suitable for increased density of development.
- Provides additional affordable housing in an area with transportation options.

Con:
- Existing residents of Skylofts have concerns about the development of Building C.

At their meeting on August 15, 2011, the City of Asheville Technical Review Committee reviewed this conditional zoning amendment and made a positive recommendation to Council.

Mayor Bellamy opened the public hearing at 5:45 p.m.

Mr. Pace Burt, representing Progressive Properties, LLC, was excited about the project. He hoped to addressed all the concerns of Skyloft homeowners, as they would like the development to be successful.

Ms. Rebecca Cobbledick, representing the Skyloft Condominium Owners Association, said that they have been living next to an eyesore for several years and excited Progressive Properties have bought the land. With the agreed upon conditions, she supported staff's recommendation to amend the conditional zoning.

Mayor Bellamy closed the public hearing at 5:49 p.m.

In response to Mayor Bellamy regarding stormwater issues, the engineer for the project said that as soon as the project is started, that will be an area of focus. Ms. Fields also noted that the developer will have to meet all of the City's stormwater requirements and will have adequate drainage on the back side of the property. Anything off-site is not proposed to be addressed.

Ms. Fields responded to Mayor Bellamy regarding the condition in the previous approval regarding stormwater runoff onto the church's parking lot. The previous developer committed $10,000 to work on the crushed storm drain; however, it required doing work on the Church's property and the two parties were not able to work out an agreement.

In response to Mayor Bellamy regarding air quality concerns on the previous project, Assistant Planning & Development Director Shannon Tuch said that issues of air quality will be regulated through our Building Safety Department. Our Building Safety Department would coordinate and assist with contacting the Division of Air Quality.

Mayor Bellamy asked the developer to keep in mind that the surrounding streets are also their neighbors.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 4014, to amend the conditional zoning for a portion of the Skylofts development located on Alexander Drive, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; (6) A maximum of 76 units may be constructed in the development; (7) Four additional affordable units shall be constructed in the remainder of the development; (8) A bus shelter will be required at the corner of Alexander and Martin Luther King, Jr. Drives; and (9) Within 60 days of final zoning approval, if Building C is not to be constructed at the same time as Buildings D-G, the developer shall comply with the conditions for improving the area around Building C as follows: (a) Stucco all exterior block walls and paint with color approved by the HOA; (b) Insure that the remaining foundation meets minimum building safety requirements; (c) Paint and secure the existing elevator building; (d) Cut all exposed plumbing down to ground level; (e) Provide monthly landscape service; (f) Remove all existing fencing and debris; and (g) Plant perimeter landscaping as required under previous plan. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 27 - PAGE 162**

**B. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF PROPERTY LOCATED ON CLUB STREET TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT**

**ORDINANCE NO. 4015 - ORDINANCE TO ZONE PROPERTY LOCATED ON CLUB STREET TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT**

376.



Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to initially zone property on Club Street to RM-8 Residential Multi-Family Medium Density District. This public hearing was advertised on September 2 and 9, 2011.

He said that the subject property was erroneously left absent from the Buncombe County tax maps for a number of years. As a result, when zoning districts were studied and assigned as part of the creation of the Unified Development Ordinance, this area was believed to be within the interstate right-of-way and was not assigned a zoning district. Staff is bringing forward the initial zoning action to address this omission and make the zoning consistent with the surrounding area.

The adjacent properties on Club Street and other neighboring streets have similar characteristics and are all zoned RM8, Residential Multi-Family Medium Density. Staff feels that this zoning district is the only option for the subject parcel, as assigning any other district to an area this small could legitimately be challenged as spot zoning.

Further, the narrowness of Club Street and its one-way traffic pattern would not befit a higher-intensity zoning district.

At their August 3, 2011, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning.

The owner has stated that he is "looking to develop this property with residential development that is similar to, and fits within, the surrounding residential context."

Based on the above findings and the analysis provided in the report, staff finds this action to be reasonable.

Pros:

- Zones property in consideration of the surrounding zoning and land use and the City's comprehensive plan.
- Rectifies ambiguity in zoning map.

Con:

- None noted.

Staff recommends approval of the initial zoning.

Mayor Bellamy opened the public hearing at 5:55 p.m. and when no one spoke, she closed the public hearing.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith moved for the adoption of Ordinance No. 4015. This motion was seconded by Councilman Russell and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 167**

**C. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSE OF PROVIDING GREATER FLEXIBILITY IN THE REGULATION OF ACCESS ONTO RESIDENTIAL STREETS BY NONRESIDENTIAL USES**

**ORDINANCE NO. 4016- ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSE OF PROVIDING**

**GREATER FLEXIBILITY IN THE REGULATION OF ACCESS ONTO RESIDENTIAL STREETS BY NONRESIDENTIAL USES**

Urban Planner Julia Fields said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purpose of providing greater flexibility in the regulation of access onto residential streets by nonresidential uses. This public hearing was advertised on September 2 and 9, 2011.

The Unified Development Ordinance of the City of Asheville currently limits access onto residential streets by nonresidential uses. A residential street is defined in the ordinance as "those streets abutted primarily by residential uses and that provide direct access to these residences." The ordinance states that nonresidential uses having frontage on more than one street (corner lots, through lots, etc.), "shall have their access from the street that is abutted by uses most consistent with the use located on or proposed for the lot for which access is being sought." The ordinance, however, provides some flexibility for corner lots to have access from another street. This option is afforded if that portion of the street is zoned a nonresidential or mixed use district and where it is determined by the City's traffic engineer that the access results in an improved traffic flow on the major street, or provided, that the access does not negatively impact the residential uses on the street (also determined by the City's traffic engineer).

Staff has found that there are instances where more efficient access to a nonresidential use with frontage on more than one street can be provided from a residential street. This can be true even in situations where the access is not on a portion of the street with a nonresidential or mixed use zoning district designation. This ordinance amendment proposes to extend the flexibility for access from a nonresidential street to any situation where it is determined by the City's traffic engineer that the access results in an improved traffic flow on the major street and provided that the access would not negatively impact the residential uses on the street.

At a meeting on August 3, 2011, the Planning and Zoning Commission discussed the proposed wording amendment and voted 4-2 to recommend the amendment to the Asheville City Council. One person was there to speak with concern for the amendment. They asked about procedures for appeal and whether these situations should be reviewed by someone other than staff.

Pros:

- Provides greater flexibility regarding access point on streets in the City's jurisdiction.
- Provides for improved traffic management.

Con:

- Concerns of residential communities that access would negatively impact them.

City staff recommends approval of this wording amendment.

Mayor Bellamy opened the public hearing at 5:59 p.m. and when no one spoke, she closed the public hearing.

In response to Councilman Bothwell, Transportation Director Ken Putman explained that this is on a case-by-case basis and how such applications will be reviewed by his Department.

When Councilman Bothwell asked if there is a process for neighborhood appeal, Ms. Fields said that there is a provision in the ordinance that any decision by City staff can be appealed to the Board of Adjustment.

In response to Mayor Bellamy, Mr. Putnam said that he envisioned part of their review process would be to reach out to the neighborhood to get any concerns addressed up front.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 4016. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 169**

**D. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE BY AMENDING THE STANDARDS FOR COTTAGE DEVELOPMENTS BY ADDING A PURPOSE STATEMENT TO THE USE-BY-RIGHT STANDARD**

**ORDINANCE NO. 4017 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE BY AMENDING THE STANDARDS FOR COTTAGE DEVELOPMENTS BY ADDING A PURPOSE STATEMENT TO THE USE-BY-RIGHT STANDARD**

Planning & Development Director Judy Daniel said that this is the consideration of an ordinance to amend the Unified Development Ordinance by amending the standards for Cottage Developments by adding a purpose statement to the Use-By-Right Standard. This public hearing was advertised on September 2 and 9, 2011.

The "cottage development" use was adopted by the City Council in June of 2007. Its stated intent was to allow small infill development of small single family homes as a means to increase the stock of housing affordable at the "workforce" housing levels. According to the staff report at the time, the impact of the allowed greater density is offset by the smaller size of the homes, and the layout and design are of particular importance to ensure that they complement the surrounding existing neighborhood. The Council had expressed an interest in this development type, and after substantial staff research, public input, and modifications suggested by the Planning and Zoning Commission; it was adopted unanimously. The use is defined as:

A cluster of small detached single family residences constructed to specific design standards and arranged around common open space, generally at higher density than the underlying zoning would allow for traditional detached single family residential development.

The use is a "by right" use, providing all technical standards are met, in the RS-8, RM-6, RM-8, and RM-16 zoning districts. To date, four have been approved and two have been fully built.

**The Kenilworth Cottages** development is located on at 127 Aurora Drive (off Kenilworth Road). The development was approved in 2010 for 11 homes, and 3 have been built and one is inhabited. The site was in bankruptcy proceedings but still advertises homes for sale and the site is kept mowed. Foundations are in place for 2 units, and basic grading and stub-out infrastructure is in place for the remaining 6 units.

**The Cottages on Liberty Green** development is located at 2 Cottage Cove Lane, off Liberty Street in the Oakley community off Fairview Road. It was approved in 2008 for 7 "green" homes for sale, and 2 have been at least partially built. None were purchased and none are inhabited; the site had appeared abandoned but recent activity has been noted.

**The Town View Common Cottages** were approved in 2008 for 11 homes and completed in 2009. They are located on at 45 Nancy Road, off Hansel Road near Patton. All 11 homes were built and are inhabited, and the project functions as an affordable housing rental property. This project received Housing Trust Fund support.

**The Beaucatcher Cottages** are located at 444 Beaucatcher Road off Kenilworth for 12 homes. They were approved in 2010 and are almost completed; some are already inhabited. It is being built by the same developer that built the Nancy Road development. It also received Housing Trust Fund support and is also to be operated as an affordable rental property.

Immediate neighbors across Beaucatcher Road are upset about this community due to its design, which located the required common green on the interior of the property (with the homes facing it), and the rear of 7 of the homes facing Beaucatcher Road. Staff is working with the developer on an augmented landscaping plan for that area to provide increased screening for the neighbors across the street.

In summary, the standards for this development type include criteria that set:

- Minimum development area (smaller than standards for the zoning district);
- Minimum street frontage on a public street;
- Minimum and maximum number of units;
- Distance requirement between cottage development and between the homes in a development;
- Height limits for the home and any accessory structure (garage);
- Size limit for the homes and "accessory structures" (generally garages);
- Percentage limit on accessory structures and accessory dwellings above garages;
- Parking requirements, including screening requirements and parking dispersal requirements;
- Common and private open space requirements including a requirement for a front porch;
- Design standards for roofs and siding materials;
- Design standards for the relationship of the homes to the street; and
- The use is not allowed on steep slopes or ridgetops; or portions of sites with a 15% grade

Despite the standards, there have been concerns with recent designs for this development type. The staff believes that some of the problems inherent in the design standards are because they seem to have been designed to accommodate properties that are "interior" - surrounded by other lots facing a public street, and taking access from a single access drive. All of the approved developments in Asheville, however, take direct access from public streets. While the developments approved include intended design features, there has been some awkwardness to certain aspects of the designs, especially related to orientation to the surrounding neighborhood and parking areas. This has led to developments that do not blend well with their surrounding neighborhoods as intended.

Further, another problem with the standards is that they do not include a purpose clause, stating the intent for this development type and allowing Planning staff some discretion in evaluation of designs that may meet the "letter" of the standards, but not the "intent" for this type of development.

Proposal: Given the concerns noted above the staff believes that a review of the standards is warranted, and modifications should be considered. Such a study is, however, likely take at least 6-8 months to complete. Further, we believe the new Affordable Housing Commission should be involved in that review and members have not yet been appointed or meeting dates set.

Therefore, as an interim measure, the staff recommends that the suggested purpose clause and statement of expectations be added to the use to allow some added flexibility in review of the use type while the more extended study is underway. Alternately, the use could be

removed from the UDO while revisions to address the other concerns are studied, but this would preclude this use which has become an option of interest for affordable housing development.

In either scenario, the staff will be proposing modifications to bring before the newly created Affordable Housing Commission for review and comment (once they are seated) before being brought to the Planning and Zoning Commission and Council. The areas of change are likely to include:

- Evaluation of the added density allowed - specifically for the very small units allowed in the accessory structures
- Evaluation of the standards given the growing interest in the use of the development for affordable rental housing
- Modifying the design standards for properties that have more than 25 feet of frontage on a public road (to ensure visual protection and preferably enhancement for existing dwellings)
- Considering additional standards for how a cottage development relates to nearby lot sizes, setbacks, and other neighborhood characteristics
- Expanding the type of architecture and siding allowed, establishing more flexibility in design (reflecting the increased use of contemporary or blended architectural styles in many Asheville neighborhoods)
- Reconsideration of the common open space requirements and associated building orientation.
- Reconsideration of the approval process to determine if it should remain as a USSR approved only by the staff or changed to an approval by the Planning and Zoning Commission under a different type of process allowing public input on the design. In order to meet the intent for the use, it would be important for any level of public review to be about the proposed design and, not the density. Currently the staff is left in the role of determining whether the submitted plan meets the required standards; and despite the intent that the standards be very explicit, we have found more opportunity for interpretation than was intended

It is important to recall that design is the crucial element for successful cottage development standards. As noted in the "Cottage Housing Development Standards Guide (Seattle, WA - 2000) used for the original staff research:

> *"In all cases careful attention to design detail and landscaping softens the impact of higher densities... "Going one step further, a design goal should be that the cottage cluster actually improves the surrounding neighborhood, rather than having just a neutral impact"..."The surest way to destroy public support for cottage development would be to build cheap little boxes that add density while degrading the aesthetics of the neighborhoods. While very inexpensive cottages may provide affordability in the short run, such development will inevitably erode support for the higher densities necessary for long-term affordability...".The policy challenge is to find ways to ensure that cottage development in single family areas follows good design principles. Cottage housing is a wonderful idea that could be killed off with just a few bad experiences."*

Thus, with a bit over four yeas of experience, the staff now believes that we should consider changes to "tailor" these very important design criteria to our experiences in Asheville

and elsewhere. Foremost is the need to ensure that the overall development fits smoothly into its setting, and is a complement to the existing homes in the area.

The Planning & Zoning Commission considered the proposal at their July meeting and voted 6-0 (with one Commissioner absent) to recommend support for this change.

As a first step in the re-evaluation of this use the staff recommends approval the wording amendment to the use Use-by-right standards located in Article XVI, to provide a new purpose statement. The purpose clause clarifies that the use is intended to allow small infill development of small single family homes that increase the stock of housing affordable at the "workforce" or "affordable" housing levels. And it clarifies that the greater density allowed for such housing is offset by the smaller size requirement for the homes, and development design standards that work to provide infill housing that is a complement to the surrounding existing neighborhood.

Mayor Bellamy opened the public hearing at 6:09 p.m. and when no one spoke, she closed the public hearing.

Vice-Mayor Newman asked that as we go through the process of getting feedback from the community, he asked that staff also solicit feedback on if there are any unneeded barriers for cottage development.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Newman moved for the adoption of Ordinance No. 4017. This motion was seconded by Councilman Smith and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 171**

**V. UNFINISHED BUSINESS:**

**A. SECOND & FINAL READING OF ORDINANCE NO. 4007 – ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO CLARIFY THE REGULATIONS FOR MOBILE FOOD VENDING**

Assistant Planning & Development Director Shannon Tuch said that at the August 23, 2011, City Council meeting the subject of Mobile Food Vending (MFV) was discussed. During this meeting a number of questions were raised regarding various aspects or impacts associated with the proposed use. She provided Council with the following information with answers to the various concerns noted.

(1) Regarding trash removal, at the August 23, 2011 City Council meeting the subject of Mobile Food Vending (MFV) was discussed. During this meeting a number of questions were raised regarding various aspects or impacts associated with the proposed use. Among the issues raised was a concern that MFV would contribute to the on-going issues and concerns over trash and litter downtown.

Presently, there are approximately 136 city trash receptacles downtown that are emptied nightly by the Department of Public Works' (DPW) downtown cleanliness crew. In addition to emptying cans every day, this crew of four full-time staff also manually picks up litter throughout the downtown core.

Recognizing a need to not only increase trash collection downtown, but also to add a recycling component, the DPW has been researching and procuring grants to begin replacing the current receptacles with new, larger trash and recycling

receptacles that will include solar compaction (similar to the receptacle in front of the Wolcott building now). Beginning in 2012, this replacement program will afford the downtown cleanliness crew additional time to expand its manual trash pick up and/or expand its service area.

The limited mobile food vending that will be permitted downtown is not expected to generate large amounts of trash and is expected to be primarily a "grab and go" style of dining. Once food is picked-up, it is expected that most patrons will carry the food back to their offices or other public destinations (parks) to eat and where the resulting trash can be disposed of properly. For those few folks who choose to eat on-site or nearby, the mobile food vendor will be required to provide a trash receptacle for the patrons to use. This receptacle will be removed from the site each day with the contents being disposed of at the commissary.

With these considerations in mind, staff is not proposing to make any amendments to the current ordinance regarding trash collection. Regarding the discussion about a possible budget amendment; however, any additional revenue to expand this service would have to be considered through a grant process or a budget amendment to be considered separately. It is unclear, given the plan for the current expanded service, if that is still warranted.

While raising privilege license fees for MFV is an option available, it is recognized that MFV is not the only business generating trash downtown (most restaurants offer take-out as well) and to place the burden of cost recovery for expanded service on this one business operation would likely be cost prohibitive for these small start up enterprises. Should Council desire to see privilege license fees raised in order to provide additional trash collection services downtown, staff would recommend examining the fees for all businesses that sell or produce disposable packaging. There has already been substantive talk regarding the establishment of a Business Improvement District (BID) and tax that would allow, among other things, the ability to generate revenue to be reapplied in that district. This is one alternative to raising privilege license fees.

(2) At the August 23, 2011 City Council meeting the subject of Mobile Food Vending (MFV) was discussed. During this meeting a number of questions were raised regarding various aspects or impacts associated with the proposed use. Among the issues discussed was a concern regarding a disparate use of liquid petroleum gas (LPG) containers.

The subject of LPG use and regulation has proven to be somewhat interesting. Regarding codes and jurisdiction:

- The NC State Fire Code does not apply to motor vehicles, only structures.
- The NC State Fire Code does not regulate LPG use outside of buildings.
- The NC State Fire Code applies to structures and the use and storage of LPG (portable cylinders) in the structures and is primarily determined by the occupancy of the structure but is generally prohibited inside of structures. Most restaurants' gas is piped, and not from portable sources.
- The Fire Code also regulates and prohibits the use of portable, open flame heaters in outdoor dining areas where the assembly of people is expected in association with a structure (usually a restaurant).

- The Department of Transportation and the Division of Motor Vehicles are responsible for registration and licensure of the motor vehicle, but does not examine the operation of the mobile food vendor or its kitchen.
- Buncombe County Health Department does issue permits for mobile food units but limits their inspections to food safety, and does not examine the vehicle or its attachments.
- The Department of Agriculture does inspect LPG use but has only five inspectors for the entire state of NC, and only two individuals dedicated to field inspections including mobile food vending. Their inspection process is primarily complaint driven or investigations after an accident.

This research has revealed that there is little to no inspection occurring for the safe use of the portable LPG containers, and there is some risk associated with the use of these containers. Propane is extremely flammable. While propane is used as a gas, it is transported and stored as a liquid under high pressure in tanks or cylinders. When liquid propane changes into a gas vapor, it expands in volume by about 270 times. Propane vapors are heavier than air and, therefore, will not dissipate rapidly and will accumulate in low areas. These two characteristics mean that even a small leak of liquid propane can result in a much larger quantity of propane vapor, which poses a risk of explosion and fire in a confined space or in low lying areas.

Determining the extent of the risk is challenging, however. Clearly, the use of portable LPG containers is a widespread practice and is most commonly used for heating and cooking, including the very common backyard grill used residentially throughout the country. In all of these instances, it is expected that the use of the LPG is in accordance with the manufacturer's instructions and if followed properly, is used with minimal risk. The proposed ordinance requires that all systems be used in accordance with these standards and if a system is found to be suspicious in any way, it would be within the city's power to withhold or revoke a permit. An inspection from the Fire Marshal's office may also be considered when trucks are initially permitted, and random inspections from zoning may be used to check to make sure connections are secure and that the cylinder and all connections are free from corrosion.

Staff has proposed a small amendment to the proposed ordinance be considered that the Fire Marshal's office, upon inspection, may hold or revoke a permit for any public safety related concern. The Asheville Fire & Rescue Department has been willing to ensure that the public safety concern is adequately addressed. In collaboration, Planning staff will check on the systems during our random inspections. Planning staff is currently in the process of drafting a check-list that would allow our inspectors to check all safety-related concerns.

The Planning and Fire staff had the opportunity to meet with one of the inspectors from the U.S. Dept. of Agriculture, which is one entity that does inspect propane systems. He was in the area to inspect the food vendors at the Mountain State Fair. They walked around the fairground site and checked all the different propane systems. They discussed any potential concerns that could arise from the different systems and staff now feels more comfortable with our ability to check the systems.

(3) Regarding privilege license fees, one of the items on which information was requested was whether a separate privilege license tax may be charged for a MFV, and if so, how much.

Pursuant to N.C.G.S. 160A-211, a MFV is considered to be a restaurant. Restaurants may be charged a separate privilege license tax for each location. If the restaurant has four or fewer seats, the fee that can be charged, by statute, is $25.00. The City already charges privilege license taxes on restaurants as State law allows. Accordingly, privilege licenses are already required for MFVs as a separate location for a restaurant; all that may be needed to implement this for MFVs is to notify the operators of this requirement. Because the tax is established by State law, the City may not impose a higher tax.

Council also inquired about the fees collected by Planning for its review of the permits for MFVs for cost recovery in association with the MFV use. Permit fees can only cover the anticipated cost associated with the actual review of the permit (not necessarily including enforcement). The applications are treated as Level 1 reviews, which is essentially a staff-level site plan review. The charge for this review is $104. It would be problematic for the City to charge anything more than the basic Level I review fee.

Fees charged for processing of regulatory permits, like Level 1 reviews, may be set at a level that is intended to defray the costs of the regulatory program, and must be reasonable. This would include the "direct" costs of the program, such as staff time for processing permits, and may be approximate. This methodology has been upheld against legal challenges. Fees may be adjusted from time to time depending on changes in the direct costs of administration, or based on experience as to the costs of the program.

She also provided Council with copies of the draft minutes of Downtown Commission meetings where the issue was discussed including the final recommendation made and draft minutes from the August Planning and Zoning Commission where their recommendation was made. These Commissions are scheduled to adopt these minutes before the Council meeting - Planning and Zoning Commission on September 7 and Downtown Commission on September 9.

Staff proposes a small clarifying language amendment regarding the enforcement as follows: "Section 4. This ordinance shall be enforced as provided in Article 18 of Chapter 7 and Sec. 1-5 of the City Code, except that a failure to obtain or display a permit, as required by Sec. 7-14-2 d. (3) e. 4 and Section 7-16-1 (c) x g (display of permit) shall be punishable as a misdemeanor pursuant to N. C. Gen. Stat. sec. 160A-175 (b) and 14-4."

Finally, the proposed ordinance is included as well, containing the following modifications per direction of the Council at their August 23 meeting including:

7-16-1(c.)x.b.2.c. – Clarifying that in the downtown area, a MFV must begin operating within thirty (30) days of receiving their permit and clarifying that individuals (not corporations) may obtain a single truck permit.

7-16-1(c)x.d.7 – Modifying hours of operation in the downtown area

7-16-1(c.)x.d.10.(a.) – Prohibiting the use of generators in the downtown area

City Attorney Oast said that because this is a second reading, for which the public hearing has already been held, further public comment is not in order unless there are substantive changes proposed that would change the effect of the ordinance. It was his opinion that the changes outlined by Ms. Tuch would not require further public debate.

Mayor Bellamy noted that there are two issues on the table: (1) city-wide regulations for mobile food vending; and (2) including those regulations in the downtown area. City Attorney Oast said that Council can separate their vote on the two issues.

Councilwoman Manheimer is interested in three different issues regarding this ordinance (1) possibility of requiring some kind of aesthetic regulation for the appearance of the food truck; (2) further limiting the hours of operation in the downtown area - cease operations at 11:00 p.m.; and (3) limiting the number of permits issued from 10 to 5. We are launching a pilot program and we should be cautious because if it does not go well, it may be difficult to scale it back or repealing it. If it goes well, we can expand it.

Councilman Manheimer moved to amend the ordinance that limits the number of permits issued from 10 to 5. This motion was seconded by Councilman Davis and failed on a 3-4 vote, with Vice-Mayor Newman, Councilman Bothwell, Councilman Russell and Councilman Smith voting "no."

Councilwoman Manheimer moved that the downtown hours of operation be reduced from 2:00 a.m. to 11:00 p.m. This motion died for a lack of a second.

Vice-Mayor Newman understood that the fees charged for processing of regulatory permits must be set at a level that is intended to defray the costs of the regulatory program and must be reasonable. He wondered how we define the regulatory program. One way is to look at the cost to cover the specific set of tasks of staff time to review the permit and make a decision. But, it's his sense that with a pilot program, you should define the regulatory program in a broader sense. When we think about the staff time to develop this pilot program, he personally would like to have a fee level set at a level that really does cover the cost of this regulatory program that we are putting into motion in addition to the specific staff time for receiving the permit and making sure it meets technical requirements. Ms. Tuch responded that it was her understanding of what we can capture in our permit review fee is just those costs associated with reviewing the application and issuing the permit, including the initial inspection. We cannot include the time spent developing an ordinance, working with stakeholders, etc., all which is part of their long-range planning function.

City Attorney Oast said that it is legal for us to charge our direct costs. Beyond that, he was reluctant to advise Council that they can charge for other less direct costs. In fact, there has been legislative proposals to restrict cities abilities to charge anything other than direct costs. We can charge same fees we charge for a Level I permit. He said staff can look at this fee question to see if they can identify any other direct costs and adjust the fees later. Council does not need to take any action to authorize the charging of fees for this purpose, as the Level I permit fee is already covered in the fee schedule.

Ms. Tuch said that staff will be coming back to Council in a year with a report summarizing the list of different items they will monitor, and fees may be one thing they should look at.

Councilman Davis said that at the Boards & Commissions Committee they discussed an oversight committee recommended by Mayor Bellamy. He wanted to see how the program progresses first, but if a committee is established, that would be another staff expense.

In response to Councilman Smith, Ms. Tuch said that, from memory, the checklist included some of the following items: trash collection; enforcement issues; permitting issues; whether there was a need for an oversight committee; whether or not we want to check on food quality; whether or not aesthetic concerns become a problem; whether 10 permits was an appropriate number for downtown; whether tables and chairs should be allowed; noise resulting from generators outside of downtown; ensure that sales tax is being collected; etc.

In response to Mayor Bellamy, Ms. Tuch said the food carts pay an initial fee of $125 (and possibly an encroachment fee onto a public sidewalk) and the renewal fee is, she believed, $75.00/year.

Upon inquiry by Mayor Bellamy, Ms. Tuch said that she would clarify the ordinance that property owners (in addition to the vendors) cannot bring tables and chairs to the site.

Vice-Mayor Newman said that he supports the policy, but it is a policy that from a direct business standpoint is benefitting a pretty small number of specific businesses. If there is a way to have those businesses help recover the costs of putting a program together, that would be fair. City Manager Jackson said that staff will capture those costs and include it in the report on the pilot program.

Mayor Bellamy expressed concern that there is not a limit on the number of food vendors that can be permitted outside of downtown and the number of staff hours necessary to monitor those vendors.

Councilwoman Manheimer was concerned that said that some of the owners of dilapidated properties will use the band-aid approach and let a mobile food truck on their property for rental income, noting that this ordinance does not require the owner to fix up their real property. She did not want the mobile food vending on a dilapidated parking lot to become a substitute for non-recovery of some of our real estate. That would move us in the wrong direction in terms of economic recovery. Planning & Development Director Judy Daniel responded that staff will monitor that and if there are 25-30 applications, they would bring it through the Planning & Zoning Commission with a recommendation to Council. It was the consensus of Council for that to occur.

Councilman Bothwell asked staff to monitor mobile food trucks which locate near schools, defeating the attempt of the schools to encourage students to have healthier eating habits,

Vice-Mayor Newman said that he supports the policy, but it is a policy that from a direct business standpoint is benefitting a pretty small number of specific businesses and if there is a way to have those businesses help recover the costs of putting a program together, that would be fair. He moved to ask staff to track their direct costs associated with administering the new regulations for this ordinance and after the pilot project that we include that full staff administrative costs into future fees. This motion was seconded by Councilman Davis and carried unanimously.

At Mayor Bellamy's request, Vice-Mayor Newman moved to divide the question with one vote being city-wide (except the downtown area), and the other vote being for the downtown area. This motion was seconded by Councilwoman Manheimer and carried on a 4-3 vote, with Councilman Bothwell, Councilman Russell and Councilman Smith voting "no."

Councilman Russell moved to adopt the mobile food regulations city-wide (except for the downtown area). This motion was seconded by Councilman Bothwell and carried unanimously.

Councilman Russell moved to adopt the mobile food regulations for the downtown area. This motion was seconded by Councilman Bothwell and carried on a 5-2 vote, with Mayor Bellamy and Councilman Davis voting "no."

**ORDINANCE BOOK NO. 27 - PAGE 137**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 11-193 - RESOLUTION APPOINTING MEMBERS TO THE AFFORDABLE HOUSING ADVISORY COMMITTEE**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Affordable Housing Advisory Committee.

On June 14, 2011, City Council established the Affordable Housing Advisory Committee.

The following individuals have applied for vacancies: Allison Bond, Anthony Goodson Jr., William Irby, David Dills, M. Mae Creadick, Brian K. Alexander, Richard Warren, Barber Melton, Scott Dedman, Lindsey Simerly and Paul Reeves.

On August 9, 2011, City Council (1) appointed Scott Dedman, William Irby, Allison Bond, Brian Alexander, Barber Melton, Lindsey Simerly and Anthony Goodson Jr. to each serve a three-year term, or an initial two-year term respectively, until their successors have been appointed; and (2) asked the City Clerk to arrange interviews for Paul Reeves, M. Mae Creadick, David Dills and Richard Warren. Mr. Reeves was unable to attend the interview.

After other Council members spoke highly of the strong candidates, M. Mae Creadick received 7 votes; David Dills received 5 votes; and Richard Warren received 2 votes. Therefore, David Dills was appointed as member to the Affordable Housing Advisory Committee, to serve an initial two-year term, term to expire September 1, 2013; and M. Mae Creadick was appointed as member to the Affordable Housing Advisory Committee, to serve a three-year term, term to expire September 1, 2014. Both terms are until their successors have been appointed.

**RESOLUTION BOOK NO. 34 – PAGE 163**

**B. RESOLUTION NO. 11-194 - RESOLUTION APPOINTING A MEMBER TO THE CRIME-STOPPERS BOARD OF DIRECTORS**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Crime-Stoppers Board of Directors. .

The term of Michele McClure expired on June 30, 2011.

The following individuals have applied for this vacancy: Princess Adams, Lynda Bell Haynes, Karl Katterjohn, Allen Brailsford and Daniel L. Ater.

On August 9, 2011, the Boards & Commissions Commission recommended interviewing Princess Adams and Karl Katterjohn.

After other Council members spoke highly of the strong candidates, Karl Katterjohn received the majority of votes. Therefore, Karl Katterjohn was appointed as member to the Crime Stoppers Board of Directors, to serve a three-year term, term to begin immediately and expire on June 30, 2014, or until his successors has been appointed.

**RESOLUTION BOOK NO. 34 – PAGE 164**

**C. RESOLUTION NO. 11-195 - RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Recreation Board. .

There currently exists a vacancy left by Ms. Sara Manual whose term would have expired on June 30, 2012.

The following individuals have applied for a vacancy: Barry Mundt, Richard Warren, John Parrish, Robert Pierce and John Broadbooks.

On August 9, 2011, The Boards & Commission Committee recommended interviewing: John Parrish, Barry Mundt and Robert Pierce. Mr. Pierce was unable to attend the interview.

After other Council members spoke highly of the strong candidates, Barry Mundt received 2 votes; and John Parrish received 5 votes. Therefore, John Parrish was appointed as a member of the Recreation Board to serve a three-year term, term to begin immediately and expire on June 30, 2012, or until his successor has been appointed.

**RESOLUTION BOOK NO. 34 – PAGE 165**

**D. RESOLUTION NO. 11-196- RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY**

Due to a conflict of interest, Vice-Mayor Newman moved to recuse Councilwoman Manheimer from participating in this issue. This motion was seconded by Councilman Russell and carried unanimously.

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Buncombe County Tourism Development Authority. .

The term of Eric Scheffer (individual who is involved in the tourist business and who has demonstrated an interest in tourism development but who does not own or operate a hotel, motel or other taxable tourist accommodation) expires on August 30, 2011.

The following individuals have applied for this vacancy: John Ellis, Cesar Romero, Ruth Summers and Chris Bubenik.

On August 9, 2011, the Boards & Commission Committee recommended interviewing: John Ellis, Ruth Summers and Chris Bubenik.

After other Council members spoke highly of the strong candidates, John Ellis received 5 votes; Ruth Summer received 1 vote; and Chris Bubenik received no votes. Therefore, John Ellis was appointed as a member of the Buncombe County Tourism Development Authority ((individual who is involved in the tourist business and who has demonstrated an interest in tourism development but who does not own or operate a hotel, motel or other taxable tourist accommodation) to serve a three-year term, term to begin August 31, 2011, and expire on August 30, 2014, or until his successor has been appointed.

**RESOLUTION BOOK NO. 34 – PAGE 166**

**E. RESOLUTION NO. 11-197 - RESOLUTION APPOINTING A MEMBER TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the River District Design Review Committee.

Mr. Randy Shull (one of two members who must be a property owner located within the River District) has resigned from the Committee, thus leaving an unexpired term until September 1, 2013.

The following individuals have applied for the vacancy: Darren Green, Chase Brugh, Philip Ellis, Jay Marino, Laurie K. Miller, Tadd Clarkson, Stuart Smith, Michael McDonough and Leslie McCormick.

The Boards & Commissions Commission recommended appointing Mr. Darren Green.

Councilman Smith moved to appoint Darren Green to serve the unexpired term of Mr. Shull, term to expire September 1, 2012, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 167**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Rev. Christopher Chiaronmonte spoke about the homeless issue in Asheville and how Asheville needs a legal place for the homeless to camp.

Rev. Lisa Landis spoke about she felt the public is mistreated by our government.

Mr. Fred English did not want his tax dollars spent for gay unions.

Dr. Milton Byrd felt that the City should issue a historic proclamation to recognize the Asheville Drum Circle.

**Lawsuit**

The following civil action was commenced in Superior Court on August 26, 2011, which is generally described as follows: Susan Zakanycz vs. City of Asheville, City of Asheville Transit Authority, Transit Management of Asheville, First Transit Inc. First Transit Transportation and Ralph Dowdle. The nature of the proceeding is a complaint for negligence.

**Closed Session**

At 7:06 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11 (a) (4); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 7:14 p.m., Vice-Mayor Newman moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:14 p.m.

Magdalen Bowerson
CITY CLERK

MAYOR

Tuesday – September 27, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Interim Deputy City Clerk Jeffrey B. Richardson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Russell gave the invocation.

**AGENDA CHANGES**

(1) **RESOLUTION NO. 11-208 – RESOLUTION APPOINTING JEFFREY B. RICHARDSON AS INTERIM DEPUTY CITY CLERK FOR SEPTEMBER 27, 2011**

Due to the absence of the City Clerk and the Deputy City Clerk, Mayor Bellamy said that it was necessary to adopt a resolution appointing Jeffrey B. Richardson as Interim Deputy City Clerk for September 27, 2011.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 11-208. This motion was seconded by Councilman Russell and carried unanimously.

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(2) Mayor Bellamy said that there has been a request to pull off New Business Item "E".

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING OCTOBER, 2011, AS "FIRE PREVENTION MONTH"**

Mayor Bellamy read the proclamation proclaiming October, 2011, as "Fire Prevention Month" in the City of Asheville. She presented the proclamation to Division Chief Barry Hendren, who briefed City Council on some activities taking place during the month.

**B. PROCLAMATION PROCLAIMING OCTOBER 7-9, 2011, AS "SALUTE TO FAMILIES CELEBRATION"**

Mayor Bellamy read the proclamation proclaiming October 7-9, 2011, as "Salute to Families Celebration" in the City of Asheville. She presented the proclamation to Dr. John Grant,

Pastor from Mt. Zion Missionary Baptist Church, who briefed Council on the events taking place for that event.

**C. PROCLAMATION PROCLAIMING OCTOBER 24, 2011, AS "FOOD DAY"**

Mayor Bellamy read the proclamation proclaiming October 24, 2011, as "Food Day" in the City of Asheville. She presented the proclamation to Councilman Gordon Smith, who briefed Council on the events taking place on that day.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 13, 2011**

**B. RESOLUTION NO. 11-198 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BROWN & CALDWELL FOR THE WATER RESOURCES ASSET MANAGEMENT PLAN UPDATE**

**ORDINANCE NO. 4018 - BUDGET AMENDMENT FOR THE WATER RESOURCES ASSET MANAGEMENT PLAN UPDATE**

Summary: The consideration of a resolution by City Council authorizing the City Manager to enter into an agreement with Brown and Caldwell in an amount not to exceed $99,880 for the Water Resources Asset Management Plan Update; and a budget amendment in the amount of $99,880.00 from savings in a N.C. Dept. of Transportation (NCDOT) capital project that was completed under budget.

In 2005, Brown and Caldwell developed an Asset Management Plan for Water Resources to create an asset inventory, improve the refurbishment and replacement (R&R) planning process, create a Replacement Planning Model (RPM), and establish a capital planning process. The Excel-based RPM was originally developed in 2005 and updated in 2007 to determine long term funding needs to R&R activities of the City's water-related infrastructure. Since completion of the $40 million revenue bond projects, changes in the City's enterprise software, and numerous other capital improvement projects, an update to the RPM and Asset Management Plan is needed to update the asset inventory, R&R schedule, and capital project plan.

Since Brown and Caldwell created the department's Asset Management Plan and Replacement Planning Model, they are the most qualified firm to complete the update. Based on that justification, Water Resources desires for City Council to waive competitive bidding requirements and award the contract for the Asset Management Plan Update to Brown and Caldwell in an amount not to exceed $99,880.00.

This project is part of City Council's strategic plan to maintain city infrastructure and to operate the City of Asheville to the highest levels of fiscal responsibility.

Pro:

- Approval of the project will allow Water Resources to create an up-to-date asset inventory, update the refurbishment and replacement schedule, update the Replacement Planning Model, and establish a multi-year capital plan.

Con:

- Additional funds will be needed from another capital project to cover the project cost.

The Water Resources Department does not have a budget in place for the Asset Management Plan Update. The budget amendment will create the project budget and transfer

the funds needed for this project in the amount of $99,880.00 from an NCDOT project that was completed under budget.

| | |
|---|---|
| Amount in Completed NCDOT Project | $486,999 |
| Amount Needed for Asset Mgt Plan Update | $ 99,880 |
| Amount Remaining in NCDOT Project | $387,119 |

The amount remaining in the completed NCDOT Project will be reallocated to other capital projects as the need arises. Staff will seek Council approval on any future reallocation of these funds.

City staff recommends City Council authorize the City Manager to enter into an agreement with Brown and Caldwell in an amount not to exceed $99,880.00 for the Water Resources Asset Management Plan Update; and to adopt a budget amendment in the amount of $99,880.

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**C. RESOLUTION NO. 11-199 - RESOLUTION ACCEPTING CHAPEL PARK PLACE AS A CITY-MAINTAINED STREET**

Summary: The consideration of a resolution to accept Chapel Park Place as a city-maintained street.

Code of Ordinances sec. 7-15-1(f)(4)a requires that streets dedicated for public use be accepted by resolution of the City Council. The developer submitted a written request on July 26, 2011, asking the City to accept the subject street as a city-maintained street.

Chapel Park Place from a point 0.07 mile north of West Chapel Road northward to Bostic Place is a developer-constructed street that has an average street width of 18 feet, grass shoulders, a length of 0.11 mile, and a right-of-way width of 25 feet.

Transportation Department staff and Public Works Department staff inspected the subject street and determined that it was constructed according to current standards as indicated in the City of Asheville's Standard Specifications and Details Manual. In addition, the Planning Department and the Asheville Fire Department have concurred with the acceptance of the subject street.

Following City Council's approval of this resolution, the subject street will be added to the official Powell Bill List.

This action complies with the City Council 2011-12 Strategic Operating Plan within the Fiscal Responsibility Area by accepting street infra-structure to help support the healthy growth of the City.

Pros:

- The City of Asheville will receive Powell Bill Funds from the N.C. Dept. of Transportation to help maintain the street.
- The street provides access and connectivity in a residential community.

Con:

- Powell Bill Funds will not cover 100% of the total cost to maintain the street.

There will be no initial financial impact to the City, although the responsibility of maintenance belongs to the Public Works Department. The City will receive Powell Bill Funds in

the future to help maintain the streets. Based on current allocation rates, the City will receive about $169 per year in Powell Bill Funds from the subject street.

Staff recommends that City Council accept Chapel Park Place as a city-maintained street.

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**D. RESULTS OF THE SEPTEMBER 12, 2011, CIVIL SERVICE BOARD EMPLOYEE ELECTION**

Summary: One copy of the results of the Civil Service Board employee election held on September 12, 2011, is to be filed with the City Manager and one with the City Clerk, who shall present such certification to the City Council at its next regular meeting. Secretary to the Civil Service Board Jessica Dunlap and City Clerk Burleson provided the following certified certificate on September 12, 2011: We do hereby certify, having opened, canvassed, and determined the original returns of the Civil Service Board employee election, the results of the Civil Service Board Employee Election held on September 12, 2011, noting the name of each person voted for and the number of votes cast for each person as follows: Virginia Robinson – 83 and Anthony Alan Coxie – 80.

**E. RESOLUTION NO. 11-200 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SIDEWALK AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR A SAFE ROUTES TO SCHOOLS PROJECT FOR CHARLES C. BELL ELEMENTARY SCHOOL**

Summary: The consideration of a resolution authorizing the City Manager to execute a sidewalk agreement with the N.C. Dept. of Transportation (NCDOT) for the construction of a sidewalk along US 70 (Tunnel Road) from Maple Spring's Road to SR 2002 (Riceville Road) in East Asheville.

The NCDOT, the City of Asheville, and Charles C. Bell Elementary School have partnered together to construct a sidewalk along US 70 (Tunnel Road) from Maple Spring's Road to SR 2002 (Riceville Road) and to install pedestrian crosswalks at the intersection of US 70 (Tunnel Road) and Maple Spring's Road/Governor's View Road as a part of the Safe Routes to School Program.

The NCDOT will be responsible to prepare the planning documents, environmental permits, and the project plans and specifications. In addition, the NCDOT will construct or oversee the construction of the project. The City of Asheville will be responsible to provide any additional right-of-way and to relocate any utilities. After the project is completed, the City of Asheville will be responsible to maintain the sidewalk.

This action complies with the City Council 2011-12 Strategic Operating Plan within the Safe Area in supporting the Safe Routes to School Program by applying for funding for one school during the current fiscal year.

Pros:

- Demonstrates a continued partnership between the NCDOT and the City of Asheville in accomplishing various projects.
- Demonstrates City support for the Safe Routes to School Program.
- The NCDOT is funding and constructing the project.

Con:

- The City is responsible to maintain the sidewalk after it is constructed.

Staff does not anticipate the need for additional right-of-way or the relocation of any utilities for the subject project. Therefore, the only anticipated fiscal impact would be routine maintenance after the sidewalk is completed which is normally included in the Public Works annual operating budget.

Staff recommends that City Council approve a resolution authorizing the City Manager to execute a sidewalk agreement with the NCDOT for the construction of a sidewalk along US 70 (Tunnel Road) from Maple Spring's Road to SR 2002 (Riceville Road) in East Asheville.

In response to Mayor Bellamy, Director of Transportation Ken Putnam said that this will be our second successful Safe Routes to School Program with the NCDOT, with the Emma community sidewalk being the other one.

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**F. RESOLUTION NO. 11-201 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE REMOVAL OF VEGETATION WITHIN THE I-240 RIGHT-OF-WAY NEAR THE HILLCREST PEDESTRIAN BRIDGE**

Summary: The consideration of a resolution authorizing the City Manager to execute a construction agreement with the N.C. Dept. of Transportation (NCDOT) for the removal of vegetation within the I-240 right-of-way near the Hillcrest Pedestrian Bridge.

The NCDOT and the City of Asheville have been working closely together during the past 18 months to make improvements at and around the Hillcrest Pedestrian Bridge to enhance the pedestrian experience. The NCDOT reopened the bridge during December 2010.

The NCDOT is willing to remove vegetation including the mature trees within the I-240 right-of-way at the City's expense. Specifically, the NCDOT will remove or cause to be removed all vegetation within the I-240 right-of-way that is not marked to be saved by City of Asheville staff. Staff is relying heavily on recommendations regarding the vegetation removal from the Asheville Police Department and using best management practices from Crime Prevention Through Environmental Design (CPTED) strategies. Vegetation will not be removed from any privately-owned property in the immediate area. The estimated cost for the work is $10,000.

This action complies with the City Council 2011-12 Strategic Operating Plan within the Safe Area in helping to make Asheville one of the safest and most secure communities compared to similar cities.

Pros:

- Demonstrates a continued partnership between the NCDOT and the City of Asheville in accomplishing various projects.
- Uses NCDOT resources instead of limited City resources.

Con:

- The City is responsible to pay for the proposed work.

As noted above, the estimated cost for the work is $10,000. Staff recommends that the funds for the subject work come from the Traffic Safety Project which is intended to finance small to medium size traffic-engineering related safety projects and pedestrian enhancements. The current balance in the Traffic Safety Project is about $131,000. Other current projects to be funded from the Traffic Safety Project include an upgrade to the traffic signal at the intersection of Haywood Street and Montford Avenue, a grant match to provide pedestrian enhancements at four existing signalized intersections, and pedestrian improvements at the intersection of Montford Avenue and Cullowhee Street/Soco Street.

Staff recommends that City Council approve a resolution authorizing the City Manager to execute a construction agreement with the N.C. Dept. of Transportation and the City of Asheville for the removal of vegetation within the I-240 right-of-way near the Hillcrest Pedestrian Bridge.

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**G. RESOLUTION NO. 11-202 - RESOLUTION TO SET ASIDE THE CONTRACT AWARD TO ROGERS GROUP INC. FOR THE WATER RESOURCES ROAD RESURFACING AT THE NORTH FORK AND WILLIAM DEBRUHL WATER TREATMENT PLANTS PROJECT AND AWARD THE CONTRACT TO APAC-ATLANTIC, INC.**

Summary: The consideration of a resolution by City Council to retract the contract award to Rogers Group, Inc. for the Water Resources Road Resurfacing Project at the North Fork and William DeBruhl Water Treatment Plants and authorize the City Manager to re-award the contract and enter into an agreement with APAC-Atlantic, Inc. in an amount not to exceed $399,812 for the project.

On September 13, 2011, Water Resources recommended and City Council awarded the contract to Rogers Group, Inc. for the Road Resurfacing Project at the North Fork and William DeBruhl Water Treatment Plants in an amount not to exceed $399,812. The scope of the project included all labor, materials, and equipment required for: (1) removing existing damaged pavement, (2) adding a stone base, (3) asphalt paving, (4) milling, (4) adding speed bumps, (5) repairing damaged curbing, (6) thermoplastic striping, and (7) additional scope as needed.

After City Council awarded the bid and Water Resources started project discussions with the contractor, Rogers Group admitted to leaving out a section of paving in the bid that, if included, would have made them the highest bidder. The section of paving that was left off the Rogers' bid was not noticed by City staff since it was included with other sections and is a small area. Upon learning of the bid error, Water Resources informed Rogers Group that they were no longer the lowest responsible bidder and the contract award needed to be retracted and re-awarded to APAC-Atlantic, Inc. upon City Council approval. The corrected bid amounts are:

1. APAC-Atlantic, Inc. – Asheville, NC; $416,512.46 total bid
2. Rogers Group, Inc. – Hendersonville, NC; $445,561.82 estimated total bid with the deleted section added to original bid of $415,879.82

The lowest responsible bidder is no longer Rogers Group, Inc. but is now APAC-Atlantic, Inc. The project budget will remain at a not to exceed amount of $399,812.00. Since the total bid cost is higher than the anticipated project budget, Water Resources will work with APAC to reduce the project scope in order to stay within the $399,812.00 project budget.

This project is part of City Council's strategic plan to maintain and improve city infrastructure and provide local companies with labor opportunities.

Pros:

- Approval of the project will allow Water Resources to complete necessary road repair at the North Fork and William DeBruhl Water Treatment Plants.
- The project will provide a local company with work through June 2012.

Con:

- Re-awarding the contract to APAC will delay the project by two weeks, which may push paving at the William DeBruhl WTP out to spring 2012.

Water Resources has a Road Resurfacing capital project in which $399,812 is currently budgeted for this project. The contract with APAC will be for a not to exceed amount of $399,812, even though their total bid is $416,512.46. Water Resources will reduce the project scope to stay within the not to exceed amount.

City staff recommends City Council retract the contract award to Rogers Group, Inc. for the Water Resources Road Resurfacing Project at the North Fork and William DeBruhl Water Treatment Plants and authorize the City Manager to re-award the contract and enter into an agreement with APAC-Atlantic, Inc. in an amount not to exceed $399,812 for the project.

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**H. RESOLUTION NO. 11-203 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ACCELA FOR THE DEVELOPMENT SERVICES CENTER SOFTWARE REPLACEMENT PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract for the Development Services Center Software Replacement project with Accela and other suppliers in total amount not to exceed $560,000 for software, hardware, and services.

An extensive Request for Proposals (RFP) process for Development Services Center software was conducted earlier in 2011. A survey of the developer community was used to guide RFP requirements. The RFP was also guided by state law requirements regarding the development services process. In addition to system requirements, the RFP included minimum proposal criteria, described the criteria for initial proposal evaluation and established finalist vendor selection activities and criteria. Responses were received from 7 vendors, and evaluated by a team that included IT, Building Safety, and Purchasing, as well as other affected departments.

A second stage of evaluation and due diligence was done for the 4 vendors who substantially met the RFP requirements. The 3 vendors who were not advancing to the second stage received notification from staff.

After completing due diligence and reference checks, staff is seeking authority from City Council to enter into contract negotiations and sign a contract with Accela.

Pros:

- Prioritize a reasonable level of business technology as a means to make staff operations more efficient
- Meets multiple city council objectives (see below)
- Enhances ability to engage in process re-engineering
- Project is being funded with a dedicated revenue source not from General Fund revenue.

Con:

- Any software implementation causes some degree of organizational turbulence during implementation

This action ties into Council's "Green" goal by implementation of processes (i.e. driving to apply and receive permits, plans submittal) that will require significantly less paper and less fuel consumption. It also ties into Council's "Sustainable" goal in several meaningful ways: (1) This project will better enable staff to fulfill the specific action item of "Ensure financial accountability by matching resources with strategic initiatives," specifically enhancing systems so that "creating meaningful performance measures" can be better accomplished; (2) In the same manner, the specific action item of "Strengthen efforts to create measurable goals, accountabilities, and outcomes for all city policies and operations" will also be enhanced by this project; and (3)

Likewise, the item of "Reform and streamline the development review process to improve the ease and efficiency of the customer's experience without compromising the quality of standards or other strategic goals (affordability, environment, etc.)" through deployment of better, greener, more online technology.

In April 2008, City Council approved a 4% Technology Fee on permits with the proceeds dedicated to technology improvements related to Development Services. The Development Services Center Software Replacement project will be funded with proceeds collected from this fee. The Technology Fee project is already budgeted in the City's adopted Capital Improvement Program.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into contracts for the Development Services Center Software Replacement Project with Accela in total amounts not to exceed $560,000 for software, hardware, and services.

**ORDINANCE BOOK NO. 27 – PAGE**

**I. ORDINANCE NO. 4019 – BUDGET AMENDMENT TO ESTABLISH A FISCAL YEAR 2011-12 BUDGET FOR PURCHASING PHASE II LED STREETLIGHTS AND PHOTOCELLS**

Summary: The consideration of a budget amendment to establish a FY 2011-12 budget in the amount of $1,192,481 for purchasing Phase II LED streetlights and photocells.

In April 2011 City Council approved a resolution to increase the annual municipal carbon footprint reduction goal from 2% to 4%. A key element to achieving this goal is the 4 year plan to change most of the municipal streetlights to LED technology. During the FY 2011-12 annual budget process, staff discussed with Council the establishment of a Green Capital Improvement Program (Green CIP) to fund this initiative. The Green CIP will initially borrow money to fund carbon reduction efforts and then will use operational energy savings to pay the debt service. This budget amendment, in the amount of $1,192,481, will provide authorization for the first year of the Green CIP.

This project supports the following City Council strategic goals: (1) Identify strategies and costs for increasing the city's annual energy reduction goal to 4%; and (2) Identify resources for strategic initiatives and create meaningful performance measures for programs and services.

Pros:

- Installation of 2,913 LED streetlights will generate an estimated $110,000 in avoided spending in the municipal streetlight operations budget. These annual savings will be rededicated to fully cover annual debt service for the investment.
- This activity will result in 879 tons of avoided carbon dioxide resulting in a 2.6% total municipal carbon footprint reduction.

Con:

- None have been identified.

As noted above, this project was discussed with Council during the annual budget process. Staff will borrow money to fund the purchase of the LED streetlights and photocells and use savings generated by the purchase to fund the debt service on the loan.

City staff recommends City Council approve the budget amendment to establish a FY 2011-12 budget in the amount of $1,192,481 for purchasing Phase II LED streetlights and photocells.

In response to Councilman Smith, Director of Finance and Management Services said that this does not constitute all of the street lights in the City and would provide to Council the percentage of streets that will be done in Phase 2.

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**J. RESOLUTION NO. 11-204 - RESOLUTION IN SUPPORT OF FEDERAL HOUSE RESOLUTION 1351 TO RETAIN MAIL SERVICES WITHIN ASHEVILLE AND WESTERN NORTH CAROLINA**

Summary: The United States Postal Service is currently experiencing financial problems, and is considering reducing or eliminating current services and facilities. The Postal Service announced that the Brevard Road Production and Distribution Facility would be undergoing a study for possible reduction, consolidation, or closure; and mail processing operations moved to Greenville, South Carolina. This move would add additional time to customer delivery, and be a reduction in service standards currently realized by the citizens of Asheville and western North Carolina. Reduction or closure of the Brevard Road facility would also affect as many as 180 workers, and the economy for Asheville and surrounding communities. The City Council supports Federal House Resolution 1351, to preserve and secure the current level of mail service to the citizens of Asheville and western North Carolina. In addition, a copy of this resolution be transmitted to Senators Richard Burr and Kay Hagan, and to Representative Heath Shuler,

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**K. RESOLUTION NO. 11-205 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AWARD THE SALE OF SURPLUS DINNERWARE TO THE ASHEVILLE INDEPENDENT RESTAURANT ASSOCIATION**

Summary: The consideration of a resolution authorizing the City Manager to award the sale (no compensation) of surplus dinnerware no longer in use at the Civic Center to the non-profit Asheville Independent Restaurant Association (AIR) and to enter into a negotiated purchase agreement.

The AIR has a forthcoming educational project which could utilize a portion of the excess dinnerware left from the old Banquet Hall at the Civic Center. The dinnerware has not been used by the Civic Center for at least 15-20 years, and has a nominal value of $1,500 or less. N.C. Gen. Stat. sec. 160A-279 authorizes a City to dispose of property to a non-profit agency that is carrying out a public purpose. The educational project would serve a public purpose. The very small value of the dinnerware, justifies the donation of the property, with the conveyance of the property conditioned on the use of the property for a public purpose.

At the September 5, 2011, Civic Center Commission meeting, the Commission voted to recommend to City Council that the dinnerware be donated to AIR for the educational project, with any excess to be offered to the Asheville Buncombe County Christian Ministry by AIR.

The consideration of this action relates to the City's Strategic Plan to form strategic partnerships to further education and economic development.

Pros:

- Allows the dinnerware to remain in the Asheville community for public use.
- Supports the City's goal to partner with outside groups and agencies to provide educational programming.
- Provides a method to have the property removed from the Civic Center which is required as part of the renovations.

Con:

- The value of the dinnerware is very nominal but the City would receive no cash for the donation, as opposed to a competitive bid process.

Nominal $1,500 potential loss of revenue could be offset by the benefit of the educational program by AIR for the Asheville community.

City staff recommends City Council authorize the City Manager to award the sale (with no compensation) of the surplus dinnerware from the Civic Center to AIR and to enter into a negotiated purchase agreement conditioning the disposition of the dinnerware on its use for a public purpose.

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**L. ORDINANCE NO. 4020 - BUDGET AMENDMENT IN THE STORMWATER FUND FROM PROCEEDS RECEIVED FROM THE CLEAN WATER MANAGEMENT TRUST FUND FOR REPAYMENT OF THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES DINGLE CREEK LOAN**

Summary: The consideration of a budget amendment in the Stormwater Fund in the amount of $116,550 from proceeds received from the Clean Water Management Trust Fund (CWMTF) for repayment of the North Carolina Department of Environment and Natural Resources (NCDENR) Dingle Creek loan.

In September 2009, the City was awarded funding through the American Recovery and Reinvestment Act (ARRA) for the Dingle Creek stormwater improvement project. The grant award was structured as a 50% grant with a 50% loan requirement, with the Clean Water Management Trust Fund (CWMTF) agreeing to cover a portion of the 50% loan amount. The City recently received a check from CWMTF for its portion of the 50% loan amount. Upon receipt of the CWMTF funds, the City is required to then repay the $116,550 to the North Carolina Department of Environment and Natural Resources (NCDENR). Since the timing of the receipt of the CWMTF proceeds was uncertain, staff did not include them in the FY 2011-12 adopted Stormwater Fund budget, therefore a budget amendment is needed to appropriate these funds and repay the NCDENR loan.

This action complies with the City Council Strategic Operating Plan goal of "Operate the City of Asheville to the highest levels of fiscal responsibility."

Pros:

- Provides the required budget authorization for the receipt of the $116,550 in proceeds from CWMTF and the repayment to NCDENR of that loan amount.

Con:

- None.

This technical budget amendment in the Stormwater Fund has no overall fiscal impact.

City staff recommends City Council adopt the budget amendment in the Stormwater Fund in the amount of $116,550 from proceeds received from the Clean Water Management Trust Fund (CWMTF) for repayment of the North Carolina Department of Environment and Natural Resources (NCDENR) Dingle Creek loan.

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Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Newman moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

**III. PRESENTATIONS & REPORTS:** None

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED AT 55 PINEY MOUNTAIN DRIVE – BELLE VISTA RETIREMENT RESIDENCE**

**ORDINANCE NO. 4021 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED AT 55 PINEY MOUNTAIN DRIVE – BELLE VISTA RETIREMENT RESIDENCE**

Urban Planner Julia Fields said that this is the consideration of an ordinance for the voluntary annexation of property located at Biltmore Town Center (55 Piney Mountain Drive). This public hearing was advertised on September 16, 2011.

Asheville Retirement Residence, LLC has petitioned the City of Asheville for the annexation of one lot located at 55 Piney Mountain Drive containing a total of 13.52 acres. A 120 suite retirement residence, Bella Vista, has recently been constructed at the site. The property is contiguous to the primary corporate limits of the City of Asheville and qualifies for annexation by petition as set forth in NCGS 160A-31.

Pursuant to NCGS 160A-31, a public hearing must be held prior to adopting any ordinance for voluntary annexation. If City Council decides to proceed with this request, it is proposed that the annexation become effective on November 30, 2011.

Pros:

- Provides for the orderly growth of the City and the tax base through the acceptance of appropriate areas into the corporate limits where owners desire annexation.
- Complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas.
- Allows for service provisions for a new retirement community that would benefit from an urban level of service.

Cons:

- Marginal costs for patrol.

The property located at 55 Piney Mountain Drive is valued at $12,813,700. This property is currently serviced by the City of Asheville Fire Department under the Haw Creek Fire District agreement. As such, the City receives a share of the Haw Creek Fire District property tax revenue based on the property's value. If the property were to remain outside the City, the City would receive $11,532 in revenue annually from the Haw Creek Fire District property tax. Once the property is annexed, it will no longer be subject to the 9-cent Haw Creek Fire District tax; instead, the property will be subject to the City of Asheville's 42 cent property tax rate. Therefore, the City will receive $53,817 annually in property tax revenue once the property is annexed. The net tax revenue gain from the annexation is $42,285. As noted above, cost impacts from this voluntary annexation are minimal.

City staff recommends City Council adopt the ordinance annexing the property at 55 Piney Mountain Drive – Bella Vista Retirement Residence.

Mayor Bellamy opened the public hearing at 5:18 p.m.

Mr. Wes Smith, representing the owner, thanked Council for consideration of this voluntary annexation.

Mayor Bellamy closed the public hearing at 5:19 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 4021. This motion was seconded by Vice-Mayor Newman and carried unanimously.

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**B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 144 CARIBOU ROAD, KNOWN AS SWEETEN CREEK HOLDINGS LLC**

**ORDINANCE NO. 4022 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 144 CARIBOU ROAD, KNOWN AS SWEETEN CREEK HOLDINGS LLC**

Mayor Bellamy administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

City Attorney Oast asked if any Council member has any special knowledge associated with this project that they disclose it at this time. Councilman Davis said that he has visited the building in connection with a different matter and Councilwoman Manheimer said that she reviewed a sign variance while serving on the Board of Adjustment not related to this matter. Both noted they would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:20 p.m.

Urban Planner Nathan Pennington submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pennington said that this is the consideration of the issuance of a conditional use permit for property located at 144 Caribou Road, known as Sweeten Creek Holdings, LLC, for future tenant upfit for occupancy of the existing 158,000 square foot building.

He said that the applicant is requesting site plan approval for one parcel zoned CI (Commercial Industrial) for the redevelopment of an existing industrial building in accordance with Section 7-5-9(a) of the UDO which designates review for commercial buildings with a gross floor area of more than 100,000 square feet. Level III projects are reviewed as a conditional use in the Commercial Industrial district.

The subject property consists of one parcel comprising 11.57 acres according to the submitted survey. The approval of a conditional use permit will allow for further upgrades to the existing building in order to accommodate additional future tenants. The existing building was once home to the Lustar dyeing and finishing factory but was abandoned for almost a decade until last year when a local scrap metal recycler moved in and was subsequently followed by a PODS storage facility tenant. The arrival of the recycling tenant triggered a Level II site plan review for the site and the property was required to be brought into compliance with all applicable UDO requirements. The owner has elected to proceed with a Level III site plan review to accommodate additional tenants because of the fact that the gross square footage of the building exceeds 100,000 square feet.

In order to meet the needs of future tenants, the building may need to be reconfigured with additions to or deletions from the building in a way that is not specifically shown on the submitted site plan. One possible configuration is illustrated on the site plan. There is no maximum structure size requirement in the CI zoning district. The final design of the building footprint will be required to be reviewed and approved by the Technical Review Committee.

The combined square footage of the development meets the Level III review threshold (projects exceeding 100,000 square feet) and is subject to the Conditional Use Permit findings outlined in Section 7-16-2(c) of the UDO.

The existing building is partially occupied by the metal recycler and the PODS storage tenants. New phases of interior building upgrades will occur as tenants become available over time.

Future tenants shall be limited to uses such as recycling, warehousing, etc. as noted on page C2 of the site plan – see note #2, and the building area summary in order to remain in compliance with parking standards.

While the site is bounded by both Caribou Road and Sweeten Creek Road, the only access to the site is afforded via Caribou Road.

According to the site plan, 154 spaces are indicated inclusive of required ADA parking and this number is well within the required minimum and maximum thresholds as prescribed by the UDO for industrial types of uses. Additionally, eight bicycle parking slots are also to be provided.

The project was approved for a small area of outdoor storage along Sweeten Creek Road during the Level II site plan review process. Since that time, the parameters of the outdoor storage has shifted around the site and grown in size. The dedicated outdoor storage area must be clearly delineated on the site plan and appropriately screened pursuant to Section 7-11-3 of the UDO. Persistent issues with unpermitted signage on the outdoor storage must also be addressed prior to the issuance of any final permits.

The site was brought into compliance with UDO landscaping requirements in 2010 under the Level II site plan review. On March 15, 2010 the Tree Commission approved an alternative compliance request for a number of landscaping requirements including street tree placement along Sweeten Creek Road and the allowance of existing perimeter landscaping to suffice for some of the required parking lot landscaping.

The open space requirement for this type of development is 15% of the total site size; a total of 1.7 acres for this site. The site plan illustrates that adequate open space has been reserved to meet this requirement.

A fee in lieu of sidewalk construction along Sweeten Creek Road and Caribou Road was previously paid when the project was reviewed under the Level II site plan process. A fee-in-lieu-of construction in the amount of $3,715 (capped at 15% of the project cost) has been received by the City of Asheville. As the subject project moves forward with additional phases, the fee-in-lieu-of decision will not change: however, the developer will be expected to submit additional fee-in-lieu-of payments which will be capped at 15% of the new total project costs.

This proposal was recommended for approval with conditions by the Technical Review Committee on August 15, 2011.

At their regularly scheduled meeting on September 7, 2011, the Planning and Zoning Commission unanimously approved the project subject to the conditions noted in the staff report. No members from the public were present to speak about the project.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

**1. That the proposed use or development of the land will not materially endanger the public health or safety.**
The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

**2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The subject property is appropriately zoned for the existing industrial uses that are occurring in the existing building. The site is surrounded by existing established vegetation and similar industrial and commercial uses and is bounded along the southern perimeter by Interstate 40 and eastern perimeter by Sweeten Creek Road.

**3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
As noted in Finding #2, the proposed development is compatible with surrounding commercial uses and adjacent transportation corridors.

**4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The site is adjacent to a trucking terminal to the north of similar commercial intensity to the north and a small warehousing building is located to the west. The subject property is separated from

Sweeten Creek Road by steep topography to the east and Interstate 40 to the south. No residential properties surround the subject site.

**5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
Elements of the proposal are aligned with the City's goals and objectives as noted in the Compliance with Comprehensive Plan and other Adopted Plans section (listed above). Specifically, the redevelopment and expansion of the building is consistent with the goals of infill development along an established commercial corridor.

**6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The site is located off of Caribou Road and is approximately ¼ of a mile from the intersection of Sweeten Creek Road. The nearest bus stop is at the intersection of Caribou Road and Shiloh Road and is approximately ¾ of a mile from the subject site. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process.

**7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
Based on the existing and anticipated uses of the site, there will not be any undue traffic congestion on the existing street infra-structure. As additional phases are constructed and/or modified, the City Traffic Engineer will review the possible traffic impacts and recommend any appropriate mitigation improvements including a traffic impact study.

Based on the above findings and the analysis provided in the report, staff finds this request, with conditions noted, to be reasonable.

Pros:

- Provides an opportunity to adaptively reuse and upgrade an existing developed site.
- The project is consistent with a number of stated goals and objectives in the comprehensive and strategic operating plans.

Con:

- New tenants have not yet been identified and may be pulled from a list of approved land uses (this flexibility may also be viewed as a "pro").

Staff recommends approval of the project as submitted by the applicant with the standard conditions and the following additional conditions: (1) The outdoor storage area must be clearly delineated on the site plan and appropriately screened with vegetation or fencing as outlined in Section 7-11-3(d)(6) of the UDO; (2) All required landscaping that was installed and has since perished pursuant to the Level II site plan review process must be replanted; (3) All outstanding violations must be resolved and fines paid related to the unpermitted freestanding sign along Caribou Road before any permits are issued; and (4) Land uses are limited to those identified in the staff report and on the site plan.

After rebuttal, Mayor Bellamy closed the public hearing at 5:24 p.m.

Based on the above findings and the analysis provided in the report, Councilman Russell moved to recommend approval of the project identified as Sweeten Creek Holdings, LLC located at 144 Caribou Road for future tenant upfit for occupancy of the existing 158,000 square foot building, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance

and be equipped with full cut-off fixtures (including wall packs) and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee if applicable; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; (6) The outdoor storage area must be clearly delineated on the site plan and appropriately screened with vegetation or fencing as outlined in Section 7-11-3(d)(6) of the UDO; (7) All required landscaping that was installed and has since perished pursuant to the Level II site plan review process must be replanted; (8) All outstanding violations must be resolved and fines paid related to the unpermitted freestanding sign along Caribou Road before any permits are issued; and (9) Land uses are limited to those identified in the staff report and on the site plan. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 27 - PAGE 182**

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**A. ORDINANCE NO. 4023 - ORDINANCE CHANGING THE NAME OF THE PUBLIC ART BOARD TO THE PUBLIC ART AND CULTURAL COMMISSION AND EXPANDING THE ROLES AND RESPONSIBILITIES OF THE COMMISSION**

**RESOLUTION NO. 11-206 - RESOLUTION AMENDING THE PUBLIC ART POLICY TO INCLUDE SPECIAL CONSIDERATION FOR REGIONAL ARTISTS**

Superintendent of Cultural Arts Diane Ruggiero said that this is the consideration of (1) an ordinance expanding the Public Art Board's role and responsibilities and changing its name to the Public Art and Cultural Commission; and (2) a resolution supporting the Public Art Policy and Implementation Guidelines.

Ordinance No. 2609 was passed on September 14, 1999, establishing a public art board and a public art policy for the City of Asheville. The ordinance was codified in Article III of Chapter 2, Division 11 of the Asheville Code. The proposed revisions to the Code and policy reflect the need in the community and within the Parks, Recreation and Cultural Arts Department to have an advisory board with a broader focus on arts and culture in Asheville.

Ordinance

The goal for expanding the Public Art Board's roles and responsibilities as outlined in the ordinance is so that the City of Asheville, the Parks, Recreation and Cultural Arts Department, and the community can have an advisory board for both public art and cultural arts.

Staff and members of the Public Art Board worked together to update the ordinance. The Public Art Board and staff also met with members of the Downtown Master Plan Cultural Arts Implementation Committee to ensure that the updates would be in keeping with the needs outlined in the Downtown Master Plan.

The Code pertaining to the establishment of a public art board will be revised as follows. Sec 2-185.8. Purposes, Responsibilities, and Powers will be revised to read:

(a) Subject to such limitation as may be imposed by laws or regulations, the Board shall serve as an advisory board to the City Council for the following purposes in order to further the public welfare:

1. Facilitate public art in public buildings and public spaces.
    a. Inform the residents of and visitors to Asheville and about public art.
    b. Advance the City of Asheville as an "arts destination" and engage public art as a major attraction for artists, cultural tourism, and economic development.
    c. Advise staff and Council on the site and content of public art.
    d. Be responsible for developing a procedure for the selection of art and/or artists, which will include public input as well as appropriate staff review. The Board shall follow its Public Art Policy and Implementation Guidelines as modified and/or amended every five years.
    e. Recommend to staff and City Council the acceptance of works of art.
2. Engage the creative sector as a major attraction for artists, cultural tourism, and economic development.
3. Encourage public confidence for and appreciation of the arts in Asheville.
4. Work to build partnerships and collaborations throughout Asheville's creative community.
    a. Support relationships and shared resources and make use of existing strengths in public and cultural arts organizations
5. Aid in strengthening the organizational structure of public and cultural arts delivery.

(b) To carry out the purposes state in subsection (a) of this section, the Board shall have the powers as follows:

1. Appoint task forces to make recommendations to the entire Board relative to specialized studies or projects that further the implementation of the purposes of this division.
2. Perform those tasks necessary to implement agreed upon decisions of the Board.
3. Members appointed to task forces and ad hoc committees shall perform their duties in a manner that satisfies all conduct required of an appointed member of the Board including restrictions on conflicts of interest.

The Public Art Board had two public forums during their monthly board meetings to discuss the policy changes and the Public Art Board Chair and some Board members had one on one meetings with key community stakeholders. The expanded roles and responsibilities were approved by the Public Art Board at their monthly meeting in June, 2011. In addition, the Boards & Commissions Committee recommended approval at their August 9, 2011, meeting.

Name Change

To better reflect their expanded roles and responsibilities, the Public Art Board has made the recommendation that the name of the Board be changed.

The recommended name is: The Public Art and Cultural Commission

The Public Art Board had two public forums during their monthly board meetings to discuss the policy changes and the Public Art Board Chair and some Board members had one on one meetings with key community stakeholders. The name change was approved by the Public Art Board at their monthly meeting in June, 2011. In addition, the Boards & Commissions Committee recommended approval at their August 9, 2011, meeting.

Policy

At the suggestion of City Council, the Public Art Board and staff updated the Public Art Policy to ensure special consideration for regional artists when commissioning and selecting works of art for the City of Asheville.

Section 2.7 (Artist Selection) of the Public Art Policy will be amended to add the following language:

> Specific artist eligibility will be developed for each project and special consideration will be given for regional artists. All projects will use regional artists and fabricators wherever practicable. Determining factors for geographic eligibility may include project budget, project location, context, and project prominence.
>
> For the acquisition of new public art, the public art board and staff will work with arts councils and other public art groups to ensure that regional artists are encouraged to participate in public art projects with the City of Asheville.
>
> The public art program will consider regional artists to be artists who live or work in the 15 counties of Western North Carolina which includes Buncombe, Yancey, McDowell, Rutherford, Polk, Henderson, Madison, Haywood, Transylvania, Jackson, Swain, Macon, Graham, Clay, and Cherokee.

The Public Art Board had two public forums during their monthly board meetings to discuss the policy changes and the Public Art Board Chair and some Board members had one on one meetings with key community stakeholders. The amendment to the policy was approved by the Public Art Board at their monthly meeting in June, 2011. In addition, the Boards & Commissions Committee recommended approval at their August 9, 2011, meeting.

The updated public art ordinance and policy complies with the Parks, Recreation, Cultural Arts, and Greenways Master Plan Goal #12 % (Enhance public confidence for, and appreciation of, the arts), (Enable sustainable funding for permanent and temporary public art), Goal #14 (Enhance facilitation and resources among art interests), Goal #15 (Build public and organizational capacity for the arts), and Goal #16 (Strengthen the organizational structure of public and cultural arts delivery).

Pros:

- Supports the City of Asheville and the community in matters related to both cultural and public art;
- Achieves Parks, Recreation, Cultural Arts, and Greenways Master Plan Goals.

Con:

- None.

Approval of the updated ordinance and policy has no direct fiscal impact to the City.

City staff recommends City Council adopt (1) an ordinance expanding the Public Art Board's role and responsibilities and changing its name to the Public Art and Cultural Commission; and (2) a resolution supporting the Public Art Policy and Implementation Guidelines.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and ordinance and they would not be read.

Councilman Smith moved for the adoption of Ordinance No. 4023. This motion was seconded by Councilman Davis and carried unanimously.

Councilman Smith moved for the adoption of Resolution No. 11-206. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 178**

**B. PROCESS RECOMMENDATIONS TO POSSIBLE AMENDMENTS TO THE NOISE ORDINANCE**

City Manager Jackson said that this is the consideration of a citizen request for City Council to amend the noise ordinance.

During the town hall meeting held at UNC Asheville on August 30, 2011, Dan Marsh proposed revisions to the City noise ordinance. Mr. Marsh suggested modifying the ordinance to strengthen the ability to measure volume of sound generated in residential neighborhoods. Additionally, he suggested consideration of the City of Chapel Hill's ordinance as a model ordinance.

In response to the citizen concerns, City Council expressed a willingness to review existing noise regulation and to possibly consider ordinance modifications. The existing noise ordinance was adopted in 2000, after several months of practical and legal analysis, public input and Council deliberation. A policy review of noise issues occurred in the spring of 2009, but was limited in scope to consideration of motorcycle noise. The motorcycle noise issue involved preparation of a staff report, and then Public Safety Committee consideration on September 15, 2009.

Before initiating a noise ordinance review, it would be helpful to receive affirmation from City Council on the goals. The following questions may guide City Council consideration:

1. *Scope:* Is the goal to specifically examine the application of the noise ordinance in residential neighborhoods or conduct a comprehensive policy review of the full application of the noise ordinance? The review limited to residential noise issues would involve data collection to determine the extent and nature of the specific problems, followed by staff analysis of alternative actions. A comprehensive review would be far more competitive, involving a best practice study of municipal ordinances, comparing ways and means of dealing with the wide variety of potential noise issues that arise and drafting of a revised ordinance.
2. *Process:* Should the process be limited to internal policy review by staff and report at the Council committee level, or should it be expanded to provide for stakeholder and community input? If the scope is limited to research of the residential noise issue alone, the process could simply provide for a staff report to be developed and presented to the Public Safety Committee. Alternatively, a comprehensive review would begin with a staff report to the Public Safety Committee on major trends emerging from location application of the noise ordinance and trends evident when benchmarking with ordinances of other cities. In this case, staff might also schedule public input sessions and obtain input from the Noise Ordinance Appeals Board. Finally, another option is to have the City's Neighborhood Coordinator and the APD Community Policing Officer to work with the neighborhood association and Mr. Marsh on a localized solution.

Comprehensive review process may require several months, and depending on the scope of the process, significant work plan adjustments may be necessary.

Provide direction for next steps and process of noise ordinance review.

Mayor Bellamy felt it would be helpful to have more information on the dollar costs associated with each of the options and the staff's availability for a comprehensive overview.

After Vice-Mayor Newman received responses from City Manager Jackson regarding the current process for noise complaints and the use of the Noise Ordinance Appeals Board, he was open to more options; however, was not aware of any better solution than what we currently have in place. He did support staff following up with Mr. Marsh to see how we can mitigate his concern.

Councilman Davis also felt that as imperfect as the noise ordinance may be, it is working pretty well. He was not certain it would be worth the time and expense to add a decibel level in the ordinance.

Councilwoman Manheimer was interested in at least reviewing ordinances from other cities as they do have restricted noise periods. She also thought it would be worthwhile to hear about any police concerns, along with their suggestions to give them better tools in dealing with the situations as they arise. She also noted it may be a bigger problem in some neighborhoods than others.

Councilman Smith agreed with Vice-Mayor Newman. He felt it's important that neighbors talk to neighbors first to resolve any conflicts and to get to know each other.

Vice-Mayor Newman concurred with Councilwoman Manheimer in that we keep a degree of subjectivity in the ordinance, but give more definition to what is the reasonableness standard in residential neighborhoods.

City Manager Jackson said that he would provide Council with more information, including a matrix of the calls received, how many go to the Noise Ordinance Appeals Board, observations from the Police Department to improve the ordinance, etc. At Mayor Bellamy's suggestion, City Manager Jackson said that he would take that information to the November Public Safety Committee for review prior to coming back to the full Council.

At Mayor Bellamy's request and Council concurrence, City Manager Jackson said that he would have the City's Neighborhood Coordinator and the APD Community Policing Officer work with the neighborhood association and Mr. Marsh on a localized solution.

**C. RESOLUTION NO. 11-207 - RESOLUTION AUTHORIZING THE APPROVAL OF THE 2011-12 OUTSIDE AGENCY AGREEMENT WITH THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL FOR OUTSIDE FUNDING**

Community Development Director Jeff Staudinger said that the Housing and Community Development Committee has completed its Outside Agency review of the request by the Asheville Buncombe Community Relations Council (ABCRC).

ABCRC has requested Outside Agency funding from the City of Asheville. ABCRC representatives have met several times with the Housing and Community Development Committee this summer to discuss the proposed scope of work and organizational structure. ABCRC will not perform federal fair housing investigations this year. It has been working to structure its scope of work in light of this change. The organization has sought and received technical assistance from fair housing and community relations commissions across the state that also do not perform federal fair housing investigations.

ABCRC is proposing a scope of work that focuses on the following areas:

- Serving as a local fair housing service and referral agency. It would refer fair housing cases to the State for investigation, and help resolve complaints that were not related to fair housing discrimination.
- Serving as an information sharing and education resource for fair housing;

- Receiving and resolving complaints relate to other alleged discrimination, including those involving employment discrimination;
- Serving as a resource for persons and groups who experience discrimination in other matters;
- Serving as a resource to the general community in matters of community relations, especially regarding the promotion of diversity in Asheville;
- Exploring how its internal structure, including the Board of Directors and staff, can support its mission.

The organization has a commitment of support of $25,000 from the Asheville Housing Authority. Support has also sought from Buncombe County, and ABCRC is in discussion with the County to confirm funding. ABCRC has also indicated it will expand its fundraising.

The status of ABCRC's tax liability is unchanged. The organization is still awaiting disposition of its case by the IRS; has no current unpaid liabilities; and has reserved funds to pay a portion of prior liabilities.

Pros:

- ABCRC is the only local organization dedicated to addressing discrimination and assisting persons who feel they have been discriminated against;
- The majority of fair housing complaints in the community are not directly related to discrimination, and ABCRC can continue to play an important role in helping resolve those complaints;
- The Asheville Housing Authority has committed to providing financial support;
- The organization is currently not staffed and cannot address these issues without staff.

Cons:

- The organization has not yet put forward a plan for Board reorganization;
- Support from Buncombe County has not been received;
- The tax liability has not yet been resolved;

Outside Agency funding sufficient to meet this request is available in the City's 2011-12 budget.

Staff recommends approval of the resolution authorizing the approval of $45,000 in Outside Agency funding for the Asheville Buncombe Community Relations Council. Staff further recommends that $5,000 of this funding be conditional on ABCRC raising $5,000 in private funds through its fundraising efforts.

After Mr. Alan Ditmore noted that outside agency funding is very competitive, Mr. Staudinger explained the process and criteria used for funding requests.

In response to Rev. Lisa Landis confusion regarding the purpose of the ABCRC, Mr. Staudinger explained that they have been open to working on a wide variety of community relations and will decide during their strategic planning process where they can be useful.

In response to Councilwoman Manheimer, Mr. Staudinger said that federal fair housing investigations can only be conducted by an organization certified as a fair housing assistance program by the U.S. Dept. of Housing & Urban Development. This organization was, but is no longer, certified. Fair housing investigations regarding discrimination are now investigated by the N.C. Human Relations Commission in Asheville and Buncombe County.

In response to Councilwoman Manheimer, Mr. Staudinger said that in the past few years, the ABCRC has handled approximately 200 complaints, of which 40 were discrimination. He said

that they cover all residential rental housing in Buncombe County, noting federal funds do not have to be involved.

Councilwoman Manheimer expressed concern about funding an agency that has major outstanding issues, noting their tax liability status and they lack of board reorganization.

Vice-Mayor Newman said that the Housing & Community Development Committee spent a lot of time on a variety of questions. They talked about the value of the ABCRC and whether they could overcome those concerns. After looking at what has worked well around the state, they feel that the organization has played a positive role in advancing the mission of preventing housing and job discrimination in the community, as well as doing positive work in community relations, e.g., mediating disputes, etc. They feel there is a lot of benefit with a local community organization. Regarding the tax liability issue, the organization has gone a long way in addressing the issue. They are also still waiting on some information from the state about the final numbers on that. In terms of the board reorganization, they are eager to begin their planning process after a new director is hired.

When Councilwoman Manheimer asked if there was any remote possibility that our funding could be used to pay off the tax liability, Councilman Smith replied that our funding will be for the operations of the ABCRC and not towards the tax liability. Mr. Staudinger explained that our funding will be provided on a reimbursable basis on the current operations. They have to incur the expenses and then ask for reimbursement. We will require documentation of all those expenses.

Councilman Davis said that people will be reluctant to call the state agency when they have comfort with a local group to talk about their concerns. The local group has become an agency that the state has relied on in other cities.

Dr. Larry McCallum, ABCRC Board Chairman, said that the Board has been working on these issues since October of 2010. We will look at securing a grant where we can have a consultant look at our organization to see how the restructured organization can be the best asset to the community. The ABCRC has been a local entity to address discrimination and other community-related issues that may or may not be discrimination issues.

Vice-Mayor Newman said that in the long run, the ABCRC needs the funding from the three traditional partners (City, County & Housing Authority) to be successful. We are optimist that all three partners will remain supportive. He would be happy to make the approval conditioned upon Buncombe County's participation, which he thinks they are close to deciding their role.

Mayor Bellamy was opposed to the condition in that this is a relationship between the City and the ABCRC, based upon reimbursable expenses. She felt we shouldn't make our decision based upon the Buncombe County Commissioners funding.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 11-207. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Councilwoman Manheimer and Councilman Russell voting "no".

**RESOLUTION BOOK NO. 34 – PAGE 179**

**D. MOTION APPROVING AN UPDATE TO THE CITY OF ASHEVILLE'S FINANCIAL POLICY**

Director of Finance & Management Services Lauren Bradley said that this is consideration of a motion to approve an update to the City of Asheville's Financial Policy.

The National Advisory Council on State and Local Budgeting (NACSLB) and the Government Finance Officers Association (GFOA) recommend that local governments adopt and annually review a financial policy to help frame resource allocation decisions as a part of a comprehensive set of recommended budget practices. Staff should annually review the policy to ensure its continued relevance and to identify any gaps that need to be addressed.

As part of this annual review process, staff is recommending that City Council consider approving an updated policy. The two most significant updates to the policy include an expansion of the section on "Reserves" and the addition of a section on "Interfund Transfers." Each of these areas is described further below.

**(1) Reserves**

Reserves, or fund balances, provide working capital to ensure adequate cash flow to pay vendors and others in a timely manner, to meet emergency or unforeseen needs, and to be able to take advantage of unexpected opportunities that require the expenditure of money. In the proposed Financial Policy, the section on Reserves (Paragraph B, Section 2) has been expanded to include fund balance targets for all operating funds. Previously, the policy on reserves only referenced the General Fund.

The proposed targets for reserves in most funds are based on the Local Government Commission's recommendation that cities and counties maintain a general fund balance of at least 8 percent of expenditures for the year. Staff is recommending that the City seek to maintain this standard in the Golf Fund, Parking Fund, and Stormwater Fund. In addition, staff is recommending this standard for the Transit Fund, although a portion of those reserves may be reflected in the General Fund's existing reserve target since transit operations rely heavily on financial support from General Fund. At the end of FY 2011, it is anticipated that the Parking Fund and the Stomrwater Fund will meet or exceed the proposed fund balance standard. The City is pursuing alternatives that will assist the Golf Fund in meeting the standard in future years.

The proposed target for Civic Center reserves is recommended at a higher rate, 16%, due to greater fluctuations in cash flow requirements as a result of events – settlements often occur on the day of the event with final ticket sale receipts credited after the event. At the end of FY 2011, it is anticipated that the Civic Center Fund will exceed this target.

By the nature of water operations, water utilities are highly capital intensive, meaning they require large expenditures of capital in order to provide the service. In addition, credit rating standards regarding the maintenance of working capital are extremely high for water utilities with superior credit such as the City's water utility. As a result, staff recommends that the Water Fund maintain a minimum of 365 days of working capital, which is a comparable standard for utilities in cities with populations of 50,000 or more. At the end of FY 2011, it is anticipated that the Water Fund will exceed this target.

**(2) Interfund Transfers**

A section on interfund transfers has been added to the policy to clarify how those transfers will be handled during the annual audit process. The section states that if financial performance in an enterprise operating fund that receives a General Fund transfer is better than budgeted, and the enterprise fund meets the reserve standards set in the policy, then any remaining portion of the interfund transfer shall be returned to the General Fund as part of the audit. Staff will provide City Council with a status report on interfund transfers during the audit process.

The City Council Finance Committee reviewed this item at its meeting on September 13, 2011, and recommended that it move forward for consideration by the full Council.

This action supports the City of Asheville's strategic goal to operate the City to the highest levels of fiscal responsibility.

Pros:

- Updates the City's financial policy to ensure it is accurate and current.
- Provides greater guidance on targets for reserves and interfund transfers.

Con:

- None noted.

Staff recommends that City Council approve the proposed changes to the City of Asheville's Financial Policy.

Mayor Bellamy did not support the portion in the Reserves section that reads "the City will maintain an undesignated fund balance equal to 15% of the General Fund operating budget, with any amount in excess of 15% being credited to a capital reserve account." She gave examples of why she would not want to automatically designate any excess into the capital reserve account. If it the money stays in Fund Balance we can do operations or capital without any problems. Ms. Bradley said the purpose of that statement is that for any amount that the general fund would have over 15%, the overage would automatically go into the capital reserve account and then in the budget process Council would make the allocation decision for that money. The justification being the capital expenses are one-time expenses that Council would generally use excess Fund Balance for.

Councilman Russell agreed with Ms. Bradley in that any amount over 15% should credited to a capital reserve account. It doesn't mean that the overage has to be spent on bricks and mortar – it can be used for other non-recurring expenses.

Mayor Bellamy asked that consideration be given to lower stormwater rates when we have exceeded the target Fund Balance and are meeting the capital needs.

At the suggestion of Mayor Bellamy, Ms. Bradley said that we can add a standard in for our water utility bond rating of AA+.

At the suggestion of Mayor Bellamy, Ms. Bradley said that we can find a section in our policy that the City will meet the Local Government Commission's published deadlines for the CAFR and the annual audits.

When Mayor Bellamy asked if we can include in the policy that we will automatically ask for reimbursement of expenses as it relates to bond packages, Ms. Bradley said that we cannot in that state law requires the City to pass a reimbursement resolution for specific issuances, which are project specific and time limited.

When Mayor Bellamy asked what the determination was for the general obligation debt of the City not exceeding 8% of the assessed valuation of the taxable property of the City, Ms. Bradley said that is published by the Local Government Commission and is a widely accepted standard.

In response to Mayor Bellamy, Ms. Bradley said that we are changing the way the water fund liability is reflected on our statements – it will become a balance sheet issue.

Mayor Bellamy could not support the portion in the Reserves section that reads "the City will maintain an undesignated fund balance equal to 15% of the General Fund operating budget, with any amount in excess of 15% being credited to a capital reserve account."

Councilman Russell moved to adopt the update to the City of Asheville's Financial Policy with two amendments regarding (1) a standard in for our water utility bond rating of AA+; and (2) a section in our policy that the City will meet the Local Government Commission's published deadlines for the CAFR and the annual audits. This motion was seconded by Councilman Bothwell.

Mr. Alan Ditmore commented on interfund transfers.

Mayor Bellamy felt the overall policy was great; however, could not support the excess of 15% being credited to a capital reserve account. She asked Council if they would be willing to divide the motion so she can support the entire financial policy (except for B (1)) and then vote separately on B (1).

In response to Councilman Russell, Ms. Bradley said that by putting the excess into a capital reserve account, the intent is to use the one-time money toward one-time expenses, which tends to be capital expenses. Having said that, through the budget process, when Council allocates that money, they can choose to do something different with it. The philosophy of taking it out of operating and putting it in capital is to reinforce Council's goal not to use it for non-recurring expenses.

When Mayor Bellamy asked for a motion to divide the motion, one was not made.

The motion made by Councilman Russell and seconded by Councilman Bothwell carried on a 6-1 vote, with Mayor Bellamy voting "no".

**E. CONSIDERATION OF "BLUE RIDGE PRIDE DAY" PROCLAMATION**

This item has been removed from the agenda.

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Ms. Ashley Arrington, representing Blue Ridge Pride, thanked Mayor Bellamy for signing their proclamation designating October 1, 2011, as "Blue Ridge Pride Day."

Rev. Lisa Landis commented on the forced closure of URTV by the corruption in local government. Mayor Bellamy provided Rev. Landis with a copy of the information that URTV provided the City, noting that the City did not walk away from their obligations.

Rev. Christopher Chiaronmonte spoke about the homeless issues in Asheville.

Mr. Alan Ditmore spoke about the need for family tourism dollars.

Ms. Charlotte Anderson was pleased to see the Blue Ridge Pride proclamation was signed by the Mayor.

Mr. Robert Todd, Chair of the Public Art & Cultural Commission, thanked the Council for their support on their expanded roles.

Councilman Bothwell regretted that Councilman Davis interpreted what was said about the ABC Board as being a suggestion of corruption on his part. He did not mean to imply or say that. He regretted the appearance that was conveyed to some people. He did not accuse him and did not think he is corrupt. Councilman Davis said that regrettably when one casts

dispersions on his livelihood, he has no choice to respond to it. He didn't think Councilman Bothwell provided him with an apology, but if that is what it was, he will accept it and they will continue to work together.

Councilman Smith appreciated how the Blue Ridge Pride proclamation came through and how everyone worked to overcome any misunderstandings.

**Closed Session**

At 7:08 p.m., Councilman Smith moved that the Asheville City Council go into closed session for the following reasons (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3); (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4); (3) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(2); and (4)To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Davis and carried unanimously.

At 7:45 p.m. Councilman Russell moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:45 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – October 11, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer (arrived in meeting at 5:14 p.m.); Councilman William A. Russell Jr.; Councilman Gordon D. Smith (arrived in meeting at 5:06 p.m.); City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Mayor Bellamy gave the invocation.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 27, 2011**

**B. ORDINANCE NO. 4024 - BUDGET AMENDMENT FROM THE FRIENDS OF THE NATURE CENTER FOR CAPITAL PROJECTS AND EDUCATION PROGRAMS AT THE WNC NATURE CENTER AND FROM THE N.C. DEPT. OF COMMERCE TO SUPPORT CAPITAL PROJECTS AT THE WNC NATURE CENTER**

Summary: The consideration of budget amendment. in the amount of $75,000, from the Friends of the WNC Nature Center for capital improvements and educational programs at the WNC Nature Center and a budget amendment, in the amount of $92,630, for an allocation from the North Carolina Department of Commerce to support capital projects at the WNC Nature Center.

Friends Donation: The City of Asheville in the Parks, Recreation & Cultural Arts Department has received a contribution from the Friends of the WNC Nature Center, Inc. to support capital improvements and educational programs at the WNC Nature Center.

NC Department of Commerce: Each year the State of North Carolina allocates and distributes funds to 25 to 30 member museums, science centers and nature centers in North Carolina. The WNC Nature Center is a member of the collaborative. These funds will be used to make improvements to the facility and animal exhibits at the WNC Nature Center.

These actions comply with the City Council 2011-2012 Strategic Plan Goal of fiscal responsibility of exploring alternatives for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities. These actions also comply with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it increases department funding with alternative funding via grants and ensuring a high level of service in parks and facilities by addressing capital maintenance of existing parks and facilities to meet community standards.

Pros:

- Provides additional funds to support capital improvements at the Nature Center without impacting the City's General Fund budget
- Provides funds to enhance special projects and services to Nature Center visitors
- Provides funds to assist in fulfilling standards and maintaining Nature Center accreditation with the Association of Zoos and Aquariums

Cons:

- None

This amendment will increase the City's total budget by $167,630 in the special revenue and general capital projects funds. There is no impact on the City's General Fund budget.

Staff recommends City Council approve the budget amendment in the amount of $75,000 from the Friends of the WNC Nature Center for capital improvements and educational programs at the WNC Nature Center and the budget amendment in the amount of $92,630 for an allocation from the North Carolina Department of Commerce to support capital projects at the WNC Nature Center.

**ORDINANCE BOOK NO. 27 – PAGE 190**

**C. RESOLUTION NO. 11-209 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXTEND THE EXISTING AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE CONSTRUCTION OF REED CREEK GREENWAY, PHASE II BY FIVE MONTHS**

Summary: The consideration of a resolution authorizing the City Manager to extend the existing agreement between the City of Asheville and the N.C. Dept. of Transportation for the construction of Reed Creek Greenway, Phase II by five months.

On February 12, 2008, City Council approved a resolution authorizing the City Manager to enter into an agreement with the North Carolina Department of Transportation (NCDOT) for up to $400,000 to construct Reed Creek Greenway, Phase II. The three year agreement was initially executed on April 4, 2008, and extended by six months on February 22, 2011. Due to construction delays the project will not be complete by October 31, 2011. The NCDOT has agreed to a five month extension until March 31, 2012, to the existing agreement contingent upon City Council approval.

This action complies with the FY 11-12 City Council Strategic Plan in that it supports seeking partnerships for investments in greenway infrastructure, including cost sharing options. In addition, this action complies with the Parks, Recreation, Cultural Arts, and Greenway Master Plan in that it allows for the implementation of the Reed Creek Greenway, a high priority greenway corridor within the master plan.

Pro:

- Extends the NCDOT agreement to allow the City an additional five months to complete Reed Creek Greenway, Phase II

Con:

- It is taking more time to complete the greenway construction than originally planned.

There is no fiscal impact to this action. The total budget for this project, which includes $383,000 in City funding, is $783,000. Staff will report on the progress of this capital project as part of the Quarterly Financial Update.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with NCDOT to extend the current agreement between the City and the NCDOT for construction of the Reed Creek Greenway, Phase II by five months.

**RESOLUTION BOOK NO. 34 – PAGE 181**

**D. RESOLUTION NO. 11-201 - RESOLUTION AMENDING THE 2011 CITY COUNCIL MEETING SCHEDULE TO (1) CANCEL THE REGULAR MEETING ON TUESDAY, NOVEMBER 8, 2011; AND (2) ADD THE CITY COUNCIL ORGANIZATIONAL MEETING ON TUESDAY, DECEMBER 6, 2011, BEGINNING AT 5:00 P.M. IN THE COUNCIL CHAMBER OF CITY HALL**

**RESOLUTION BOOK NO. 24 – PAGE 182**

**E. RESOLUTION NO. 11-211 - RESOLUTION DESIGNATING THE MAYOR AS THE AUTHORIZED SIGNATORY OF THE 2011-12 OUTSIDE AGENCY CONTRACTS**

Summary: The consideration of a resolution to change the approved signatory on Outside Agency program contracts.

When Outside Agency program funding was approved (June 14 and September 27, 2011) the City Community Development Director was designated as signatory for the contracts. Typically, this position does not receive authority to sign contracts for this program. The purpose of the resolution is to designate the Mayor as the authorized signatory for the City on these contracts.

Staff recommends approval of the resolution to designate the Mayor as signatory of 2011-2012 Outside Agency contracts.

**RESOLUTION BOOK NO. 34 – PAGE 183**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously (with Councilwoman Manheimer absent).

**III. PRESENTATIONS & REPORTS: None.**

**IV. PUBLIC HEARINGS:**

**A. CONTINUATION OF PUBLIC HEARING TO CONSIDER CLOSING SEVERAL PORTIONS OF UNOPENED RIGHTS-OF-WAY AND CITY STREETS WITHIN THE MONTFORD COMMONS DEVELOPMENT AREA**

Mayor Bellamy said that she has received a request from Mr. Kyle Evans, representing Montford Commons, LLC, requesting a continuance until November 22, 2011, as they are still waiting to receive the final funding commitment from HUD required to move the project forward. He spoke with a HUD liaison on October 4 that they have been working closely with and they will do everything they can to bring this to a close before the November 22 date. Therefore,

Councilman Russell moved to continue this public hearing until November 22, 2011. This motion was seconded by Councilman Bothwell and carried unanimously (with Councilwoman Manheimer and Councilman Smith absent).

**B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF PROPERTY LOCATED AT 3 EAST WANETA STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/ CONDITIONAL ZONING TO ALLOW FOR CONVERSION OF THE DUPLEX TO A SINGLE FAMILY HOME; THE CREATION OF A SECOND PARCEL FOR FUTURE DEVELOPMENT OF A SINGLE-FAMILY DWELLING; AND A REQUEST FOR MODIFICATIONS TO STANDARDS FOR SETBACKS AND LOT SIZE**

**ORDINANCE NO. 4025 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 3 EAST WANETA STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/ CONDITIONAL ZONING TO ALLOW FOR CONVERSION OF THE DUPLEX TO A SINGLE FAMILY HOME; THE CREATION OF A SECOND PARCEL FOR FUTURE DEVELOPMENT OF A SINGLE-FAMILY DWELLING; AND A REQUEST FOR MODIFICATIONS TO STANDARDS FOR SETBACKS AND LOT SIZE**

Urban Planner Julia Fields said that this is the consideration of an ordinance to conditionally zone 3 East Waneta Street from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the conversion of the duplex to a single family home; the creation of a second parcel for future development of a single-family dwelling, and approval of modifications to the standards for setbacks and lot size. This public hearing was advertised on September 29 and October 7, 2011.

Ms. Fields said that the property that is the subject of this conditional zoning application is currently part of a 7,353 square foot (.18 acre) parcel located at 3 E. Waneta Street in the Montford Historic District containing one structure with two dwelling units (a former garage with upstairs apartment modified to create a dwelling unit in the former garage area). The lower level dwelling unit was, according to research by city staff, created without a permit at some time in the past. The owners, Alexis and Jenny Giese, initially filed an application for the conditional rezoning of a portion (2,353 square feet or 0.054 acre) of the parcel identified as PIN 9649.03-6746 from RM-8 (Residential Multi-Family Medium Density District) to URD-CZ (Urban Residential Conditional Zoning) to allow that structure to remain as a duplex on the property. They plan to divide off the rest of the property creating a lot for a single family dwelling.

The 1976 inventory of properties in the Montford Historic District indicates that at that time 3 E. Waneta contained a building with an apartment above and a garage below. Although the addresses were different, this building was located on the same parcel as a single-family home with the address of 38 Soco Street. Despite the different addresses the building appears to have been an accessory structure to the primary residence with the Soco Street address. The home at 38 Soco was demolished sometime after 1976. The zoning of the property from 1976 until 1997 was R-3 Medium Density Residential. While this district allowed multi-family dwellings on a property, the required minimum lot area was 8,000 square feet for the first unit and 2,500 square feet for any additional unit. That zoning would not have allowed the creation of additional units on the property. In fact, two units (the single family home and accessory apartment) created a nonconforming situation. Additionally, staff can find no record of any permits being issued to allow for the garage portion of the building to be converted to a residence from 1976 forward.

With the adoption of the Unified Development Ordinance (UDO) in 1997, this property became zoned RM-8. Again, this district allows for multiple dwelling units on a property but would require 10,000 square feet for two units (5,000 per unit) unless the additional dwelling was

considered an accessory apartment. There can only be one accessory apartment on a parcel with a single-family home and the accessory apartment is limited in size. This information from our research has led staff to the conclusion that the additional apartment in the former garage was created in violation of City ordinances.

When the Gieses bought the property at 3 E. Waneta, at the corner of Waneta and Soco Street, the property only contained the former accessory structure (the single-family home having been destroyed). Mr. Giese indicates that the two units were in existence at that time. In 2006, the Gieses received permits to renovate the accessory structure to replace the garage door openings with period appropriate carriage house doors and replace the covered porch with a screened in porch in addition to a number of exterior materials enhancements. At the time of this permitting the accessory apartment (only one) would continue to meet the accessory apartment standards in the UDO should a primary residence be constructed on the property at a later date.

In 2007, the Gieses received a notice of violation from the City when it was learned that the screened in porch had been fully enclosed. Mr. Giese subsequently received zoning and building permits to allow for this work – but the approvals were granted with the understanding that the accessory apartment was now too large (approximately 800 square feet) to qualify as an "accessory apartment" unless any new single-family home built on the parcel was at least 3200 square feet in size (accessory apartments are limited to 500 square feet or 25% of the principal residence). At about the same time, the Gieses received a notice of violation (NOV) for violating the minimum housing code for the second (downstairs) garage unit (no housing certificate obtained) and for an expired certificate for the upstairs unit. The NOV required that the downstairs dwelling unit be returned to unoccupied space per zoning code and building safety standards.

Mr. Giese met with members of City staff (Historic Resources, Planning and Zoning, Building Safety) on many occasions. The staff's position at those meetings was that:

- The Gieses may keep the upper apartment but the second unit must be returned to the previous use as a garage or comparable unoccupied space.
- Because of the size of the unit, for the upstairs unit to be considered an accessory apartment, should a new single-family home be built on the property, the single family home would have to be at least 3200 square feet in size.
- If no primary residence is built, the apartment can become the primary residence and the rest of the property (with the Soco Street address) will have to remain vacant.
- Under current zoning, the property is too small to support a duplex (10,000 square feet required).
- Under current zoning, the property is too small to subdivide legally (RM-8 requires 5,000 square foot minimum lot size).
- Staff indicated to the Gieses that we could support a subdivision of the property creating a separate 5,000 square foot lot; if they agreed to leave one dwelling unit with garage on the remaining portion (2,353 sf). This would require a conditional zoning to RM-16 for only one unit on that portion.

Instead the Gieses initially sought conditional zoning to URD-CZ (Urban Residential Conditional Zoning) for the portion (2,353 square feet) of the property containing the former accessory structure. They had hoped to keep and "legalize" the two units in this structure and leave the remaining portion (5,000 square feet) of the parcel for future single-family development. Urban Residential zoning is the only residential zoning that would allow the two units to remain in the current accessory structure on that sized (2,353 square feet) lot.

The staff expressed significant concerns with this proposal as the Urban Residential District was established to provide for urban scaled residential structures that relate to the street and are located on significant transit corridors and/or in high growth areas. The district standards require orientation to the street and establish design criteria for entrances and openings on the

facades. While the URD would allow for a density of two units on the parcel for which this conditional zoning is applied, staff expressed our belief that this district was not created for situations like the one on E. Waneta and using this zoning in this manner would establish an inappropriate precedent.

The Technical Review Committee reviewed this proposal on July 18, 2011, and made the technical comments.

The Asheville Planning and Zoning Commission first considered this matter on August 3, 2011. The commission members expressed concern that if this conditional zoning was approved, that ultimately there could be four units total on the site (the two existing units plus a single family home and accessory apartment on the 5,000 square foot portion). It was suggested that the applicant meet with staff to try to come up with a solution that would limit the property to no more than three units. The matter was continued until September 7th.

Prior to the meeting on the 7th of September, the applicant met with staff and amended the application to request that the subdivision still take place. However the current duplex portion (2,353 square feet) of the property would be conditionally zoned RM-16 only allowing one unit. The 5,000 square foot portion would remain RM-8 unconditioned. The applicant is willing to convert the duplex back to a single unit.

To rezone the smaller portion to RM16 conditionally allowing only one unit in the existing structure, will require modifications to be granted. These are as follows:

1. That the lot size be modified from the required 3,500 square feet by 1,147 square feet.
2. That the front setback be modified by 5 feet. (15 feet required; the existing structure is only 10 feet back).
3. That the side setback to the west be modified 3.6 feet (6 feet required and only 2.4 feet from property).
4. That the rear setback be modified by 10.8 feet (15 feet required and only 4.2 feet from property line).

Staff feels this is an acceptable solution to the situation presented. At its meeting on September 7, 2011, the Asheville Planning and Zoning Commission unanimously (4-0) voted to recommend this conditional zoning to you. Three people spoke at this meeting commenting that they felt the density to be too great for the area.

Section 7-7-8(d)(2) of the UDO states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The applicant is proposing to subdivide the property and use the rezoned portion for a single dwelling unit in a residential neighborhood. The proposal, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance and other applicable standards except for those modifications proposed.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The applicant proposes to retain all existing vegetation on the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   It is the opinion of Planning Department Staff that the density that is proposed with the amended request is in keeping with the surrounding area which is comprised of single-family homes on small lots.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   It is the opinion of the staff that the density is in keeping with that found in the area surrounding this property.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   This application supports goals related to the provision of affordable housing.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The proposed use is located one block from Montford Avenue which is serviced by Transit Route 11 of the City's Transit System. The project has been reviewed by the Technical Review Committee and noted the technical comments are found in their report.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The City's Transportation Department has reviewed the plans and feels that no undue traffic congestion or traffic hazards will be created.

Pros:

- Provides additional affordable housing in an area with transportation facilities and infrastructure to support it.
- Applicant has worked with staff and the Asheville Planning and Zoning Commission to come up with a solution to remedy an existing situation.

Con:

- Creates a lot that is smaller than is allowed in the RM-16 district for a single-family structure.

Based on the above findings and the analysis provided in the report; staff finds this request to be reasonable and recommends approval for the conditional zoning request and modifications.

At its meeting on September 7, 2011, the Asheville Planning and Zoning Commission unanimously (4-0) voted to recommend this conditional zoning to you. Three people spoke at this meeting commenting that they felt the density to be too great for the area.

Mayor Bellamy opened the public hearing at 5:11 p.m.

Ms. Patsy Brison, attorney representing the applicants, said that they tried to take into all concerns expressed by the Planning & Zoning Commission and staff and modified their application for three units for the entire track of land. They are trying to encourage affordable housing and infill development. She noted that the lot fronting on Soco Street is within the Montford Historic District and will require a lot of review which will hopefully address the

neighborhoods concerns regarding density and parking. She urged Council to support the conditional zoning request.

Mr. David Patterson, resident on Short Street and President of the Montford Neighborhood Association, opposed to seeing the parcel divided and the density increased. He said that the issue is density and approving this conditional zoning will be setting a precedent in the neighborhood.

Ms. Ellen Nutter, resident on Flint Street representing the Montford Neighborhood Association, expressed concern about density. She said that the immediate neighborhood, and almost all of Montford, is zoned RM-8 which allows two units per lot. She said they supported the subdivision of the lot, but asked Council to allow only two units, not three (no accessory unit on the lot on Soco Street). Allowing three units would create a precedent for increasing density in many areas in Montford. East Waneta Street is very narrow with no opportunity for on-street parking. The unit on East Waneta Street has a concrete pad in its front yard for parking of one car and it cannot be expanded for more than one car due to the smallness of the lot and it's within the required setback. She asked that the Council rezone the new lot on Soco Street to RM-8 Residential Multi-Family Density District/Conditional Zoning with the condition that only one unit be permitted on that lot.

At 5:20 p.m., Mayor Bellamy closed the public hearing.

For clarity purposes, Ms. Fields explained that the property owner could not build a duplex on the lot fronting Soco Street because 5,000 sq. ft. is required for each unit in RM-8 and the lot size is too small. He could only build a single family home with an accessory apartment (either a garage apartment or within the structure). The owner would still have to meet the standards for an accessory apartment. The neighborhood wants only the single family home and not the accessory apartment.

In response to Councilwoman Manheimer, Ms. Fields said the owner wants to make the small lot a conforming lot (with the duplex being converted into one unit) and the larger lot be a conforming lot allowing whoever buys it the ability to build a single-family home and potentially an accessory structure.

In response to Councilman Davis, Ms. Fields reminded Council that whatever is built on the larger lot would have to go through the Historic Resources Commission as well. There are historic retaining walls on the property and she understood that it would be very difficult to tear them down. Therefore, it will be difficult for accessory unit, unless it's located within the structure itself (like a basement unit). The accessory structure limitations in the ordinance state that the structure has to either be a maximum of 500 sq. ft. or a maximum of ¼ of the single-family home on the property.

Councilman Davis expressed concern of the accessory structure being allowed on the small size of the property.

In response to Mayor Bellamy, Ms. Fields said that she had no proof that the former home on the larger lot that burnt down was multi-family.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith moved for the adoption of Ordinance No. 4025 to conditionally zone 3 East Waneta Street from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the conversion of the duplex to a single family home, the creation of a second parcel for future development of a single-family dwelling, and approval of modifications to the standards for setbacks and lot size, subject to the

following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) Any new site lighting must comply with the City's Lighting Ordinance, Section 7-11-10 of the Unified Development Ordinance; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards. This motion was seconded by Councilman Russell and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilwoman Manheimer voting "no."

City Attorney Oast said that because the ordinance was not adopted by a 2/3 vote of Council, it is necessary to bring the ordinance back at the next meeting for a second and final reading.

In response to Councilwoman Manheimer, Assistant Planning & Development Director Shannon Tuch said that there is an extent to what the Board of Adjustment can grant and the lot size is too small. The only alternative for the applicant was to go through the conditional zoning process.

Mayor Bellamy felt Council may want to review the accessory apartments standards to see if we are being successful without being contentious at the same time.

Councilman Davis felt that since this is a fairly small piece of property he wondered if Council could condition the accessory structure to be attached to the single-family home. Ms. Fields said that the applicant would have to agree to that condition. The applicant would have to make an application and it would have to go through the review process of the Technical Review Committee, the Planning & Zoning Commission and then back to City Council. City Attorney Oast noted that without going through a new process initiated by the owner, Council cannot condition the use of the lot that is not subject to the rezoning.

In response to Vice-Mayor Newman, Ms. Brison said that the constraints of the site will likely result in one single-family home with the possibility of an accessory unit within it - provided it meets all the other requirements. She said that it has been a long process to get to this point and after compromising, they believe this is the best solution.

**ORDINANCE BOOK NO. 27 - PAGE 192**

**C. PUBLIC HEARING FOR THE MISSION HOSPITAL SIGN PACKAGE FOR PHASES 2-4**

**ORDINANCE NO. 4026 - ORDINANCE APPROVING THE MISSION HOSPITAL SIGN PACKAGE FOR PHASES 2-4**

Technical Review Manager Kim Hamel said that this is the consideration of an ordinance to approve the Mission Hospital Sign Package for Phases 2-4. This public hearing was advertised on September 29 and October 7, 2011.

Ms. Hamel said that this is the consideration of a multi-phase signage plan for Mission Hospital and surrounding campus locations.

On January 25, 2011, the Asheville City Council approved the first Phase of a forthcoming master signage plan for Mission Health Systems (MHS). The initial phase was submitted in advance of the multi-phased approach to signage for the campus in order to address the immediate needs for directional signage associated with the Hospital Drive road opening and the impending opening of the Cancer Center slated for completion in December of this year.

The signage plan submitted with this application addresses Phases 2- 4 of an 8 phase Wayfinding program that is to be implemented over the next four years. The plan builds upon the changes implemented in the first Phase and includes the installation of additional directional and identification signs. It also continues with planned retrofits of older signs to be consistent with the current design standards and wayfinding methodology established in the first Phase.

For the purposes of this review, the staff focused on signs that would normally require review and permitting; primarily signs visible to adjoining properties and roadways. In their submission, however, MHS felt that it was important to provide Council with a broader view of the project to illustrate the complexities of developing a wayfinding program (for a hospital with multiple campus locations) and to help explain the reasoning behind the sign package request.

As in the staff review of the first Phase, a "Development Area" for Mission Health Systems was defined and evaluated. It includes the Memorial Mission and St. Joseph's Campus drives and entrances along Biltmore Avenue, the new Hospital Drive and Victoria Road connections and MHS mini campus locations on the NW and SE sides of the street (445-495 Biltmore Avenue and Cancer Center), and the Mission Hospital entrances along McDowell Street and Doctors Drive.

In addition to the maps and illustrations provided by applicant, the following tables provide a summary of the signs that are required a sign permit by the City. The information includes the types of signs proposed, their respective sizes and the phase in which the sign is to be installed. The sign package review is (again) broken into two areas: Identification Signage and Directional Signage.

Phase 2:

Phase 2 of the signage plan proposes new identification signs, retrofits of existing signs, and vehicular directional signs within the development area. It also includes placeholders for future construction and building expansions, retrofit of several MAHEC signs (upon completion of MHS's purchase of the property), and new identification signs for the Cancer Center.

Two (2) new and one existing corporate façade identification signs are proposed within the development area. (Sign 2.142c has been omitted from the sign package.) Signs are proposed to be located on the upper stories of existing buildings or buildings targeted for future expansion. The signs include:

- Location 2.215 (new/ future expansion): Mission Hospital campus signage proposed on the twelfth story of a future expansion at Mission Hospital above the Surgery Center entrance located off of Lily Carmichael Drive.
- Location 2.142a (new/ existing): Cancer Center signage proposed on the 4th story facing Hospital Drive
- Location 2.083 (retrofit): Mission Hospital campus signage replaces existing sign and is proposed on the seventh story and visible from Biltmore Avenue.

In addition to the corporate identification signs noted above, one new additional wall mounted sign (Location 2.142b) is proposed for the new Cancer Center and is located above the primary entrance into the Cancer Center, facing Hospital Drive.

The specific sign dimensions for each of the identification signs proposed for the development are provided in the table below.

CAMPUS IDENTIFICATION AND WALL MOUNTED SIGNS: PHASE 2

| SIGN TYPE/ LOCATION | PROPOSED |
|---|---|
| Corporate Façade Identification<br>Memorial Campus<br>I-1 (New / Future Vertical Expansion)<br>Location: 2.215<br><br>* Illustration I | Wall Mounted- 12th story (future expansion)<br>Size: < 80 square feet |
| Corporate Façade Identification – Cancer Center<br>I-2 (New)<br>Location 2.142a<br><br>* Illustration II | Wall Mounted- 4th story (5 story bldg.)<br>Size: < 105 square feet |
| | |
| Building Identification<br>Cancer Center<br>IB-5a (New)<br>Location: 2.142b<br><br>* Illustration III | Wall Mounted – above building entrance<br>Size: 12.5 square feet |
| Building Identification<br>IB-5b (Remove and Replace)<br>Location: 2.212b<br><br>* Illustration IV | Decorative Wall Mounted – Remove MAHEC sign, replace with new Mission Health Sign<br>Size: Not to exceed 60 square feet |
| Building Entrance Identification<br>IB-5c (Retrofit)<br>Location: 2.214<br><br>* Illustration V/VI | Remove and replace wall MAHEC signs (wall mounted and freestanding sign) with new Mission Health signage<br>Wall: not to exceed 60 square feet<br>Freestanding: Not to exceed 8'in height, 60 square feet in area |

Phase 3

The proposed directional signs in Phase 3 are intended to serve future development projects and expansions (not yet reviewed by the City). Several include: the construction of a new parking deck along Hospital Drive with an overhead connection to Lily Carmichael Drive and an expansion of the service zone with new internal road connections to Doctor's Drive. They will thus not be installed until these expansions are completed.

Phase 4

As in Phase 3; the Phase 4 signage is proposed to support several new projects that will require alteration of existing signage and necessitate additional signage needs. In the submitted documents MHS plans a significant building expansion over a portion of the Memorial Visitor Parking Deck that will result in a new Main Entrance and circular drop-off area for the Memorial

Campus. The circular drive in front of the new main entrance will connect the new Parking deck proposed in Phase 3 to lower levels in the existing Memorial Visitor parking deck.

Vehicular Directional Signs – Phase 2, 3 and 4

All three phases of this review include new directional signs or retrofits of existing directional signs to bring them up to the current design standards approved in the first Phase. The type and size of the directional signs included in this review are identical to those approved in Phase 1, and are designed to direct and route emergency vehicles, patients and visitors to the correct hospital and entrance.

As noted in the January staff report, the various types of directional signs are differentiated by height, square footage and branding (name/logo) provided. The larger signs are designed to comply with the DOT cap heights standards (letter size) that address higher vehicle speeds on roadways with multiple traffic lanes; while smaller directional signs are primarily located at street intersections and in several internal sites within the campus boundary where there are higher levels of vehicle and pedestrian activity.

The table below provides the location and type of directional signage proposed for each location point identified on the map.

VEHICULAR DIRECTIONAL SIGNS: PHASES 2-4

| INSTALLATION PHASE | SIGN TYPE/ LOCATION | WHAT IS PROPOSED |
|---|---|---|
| Phase 2<br>New<br><br>* Illustration V-I | DV-2<br>Locations: 2.250 (Biltmore Avenue)<br>Directional Sign w/ Name, Logo, Address | MAHEC Replacement<br>Height: 9'-11"<br>Size: < 50 sqft |
| Phase 2<br>Retrofit<br><br>* Illustration V-I | DV-2r<br>Locations: 2.002, 2.028, 2.080 (Biltmore Avenue)<br>Directional Sign w/ Name & Logo, | Height: 9'-11"<br>Size: < 50 sqft |
| Phase 2<br>Retrofit<br><br>* Illustration V-2 | DV-3r<br>Location: 2.017, 2.079<br>(Internal locations but visible)<br>Direction Sign w/ Name & Logo | Height: 11'-1/2"<br>Size: < 53 sqft |
| Phase 2<br>Retrofit<br>* Illustration V-3 | DV-4r<br>Location: 2.018,2.019<br>(Internal location, St Joe's Campus)<br>Direction Signage w/ Name & Logo | Height: 7'-6"<br>Size: < 20 sqft |
| Phase 2<br>Retrofit<br><br>* Illustration V-4 | DO-1r<br>Location: 2.036a,2.088<br>(Biltmore Avenue)<br>Overhead Wall-Mounted Directional w/ Name & Logo | Size: < 50 square feet |
| | | |
| Phase 3<br>New<br><br>* Illustration V-2 | DV-3<br>Location: 3.219<br>(Memorial Campus Entrance )<br>Direction Sign w/ Name & Logo | Height: 11'-1/2"<br>Size: < 53 sqft |
| Phase 3 | DV-4 | Height: 7'-6" |

| | | |
|---|---|---|
| New<br><br>* Illustration V-3 | Locations: 3.221, 3.222, 3.223, 3.224<br><br>(Doctor's Drive)<br>Direction Signage w/ Name & Logo | Size: < 20 sqft |
| Phase 3<br>New<br><br>* Illustration V-4 | IB-4p<br>(Doctor's Drive)<br>Building Entrance/ Parking Identification Sign | Height: 7'-6"<br>Size: < 15 sqft |
| Phase 3<br>Retrofit<br><br>* Illustration V-2 | DV-3r<br>Location: 3.052<br>(Internal location but visible)<br>Direction Sign w/ Name & Logo | Height: 11'-1/2"<br>Size: < 53 sqft |
| Phase 3<br>Retrofit<br><br>* Illustration V-5 | DV-5r<br>Location: 3.102<br>(Corner - McDowell and Victoria Rd<br>Directional Sign w/ Name and Logo | Height: 8'- 6"<br>Size: < 28 sqft |
| Phase 3<br>New<br><br>* Illustration V-6 | DO-1<br>Location: 3.215, 3.215a<br>(Hospital Drive, new bridge)<br>Overhead Wall-Mounted Directional w/ Name & Logo | Size: <50 sqft |
| Phase 3<br>New<br><br>* Illustration V-6 | DO-2<br>Location: 3.088a<br>(Biltmore Avenue)<br>Overhead Wall-Mounted Directional w/ Name & Logo | Size: < 35sqft |
| | | |
| Phase 4<br>Retrofit<br><br>* Illustration V-7 | DV1.3<br>Location: 4.001<br>(Biltmore Avenue)<br>3-Sided Directional Sign- No logo | Update Message Panels<br>Height: 8'-11"<br>Size: 42 sqft |
| Phase 4<br>Retrofit<br><br>* Illustration V-2 | DV-3r<br>Location: 4.036, 4.219<br>(Hospital Dr – 445, Future Campus Entrance )<br>Direction Sign w/ Name & Logo | Update Message Panels<br>Height: 11'-1/2"<br>Size: < 53 sqft |
| Phase 4<br>Retrofit<br><br>* Illustration V-5 | DV-5r<br>Location: 4.087, 4.102<br>(Corner - McDowell and Victoria Rd)<br>Directional Sign w/ Name and Logo | Update Message Panels<br>Height: 8'- 6"<br>Size: < 28 sqft |

Findings:

The stated purpose of allowing the consideration of a separate signage plan is as follows:

*The purpose behind this section is to permit creativity in sign design and placement to address site issues and constraints associated with topography, pedestrian-orientation, way-finding and other conditions unique to the subject development.*

The staff believes that MHS has proposed a comprehensive sign program that meets the intent and purpose of a signage plan. The signs have been creatively designed and customized to exclusively identify multiple MHS campus locations and parking areas by providing visible cues that are consistent in color, layout, branding (pictography), and structural form (stone bases).

The Directional (wayfinding) signage is also customized to complement the common design elements featured in the identification signs (noted above) visually informing motorists that they are still within the hospital campus area. The signs are strategically located throughout the development area and should provide clear direction to visitors and patients traveling to specific campus destinations.

Pros:
- Comprehensive, graphically consistent signage
- Presents an intuitive and effective wayfinding (directional) approach

Con:
- None noted

Staff supports MHS efforts to create a unique and consistent identity. We believe this approach is satisfactory and we recommend approval with the list of the following conditions: (1) A 10% deviation to the sign standards presented in Phases 1-4 can be considered with review and approval by the Planning Director. All other deviations to this approved plan will result in an amendment to be reviewed and approved by City Council; (2) All signs shall meet site distance triangle and building code requirements, including clearance requirements for pedestrian and vehicular traffic; (3) All signage must comply with illumination standards as outlined in Articles 11 and 13 of the UDO; and (4) All signs in the project area shall comply with the proposed standards and no exceptions or variances are permitted.

Mayor Bellamy opened the public hearing at 5:44 p.m. and when no one spoke, she closed the public hearing at 5:44 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 4026 to approve the signage plan for Mission Hospital Systems as proposed with the following conditions: (1) A 10% deviation to the sign standards presented in Phases 1-4 can be considered with review and approval by the Planning Director. All other deviations to this approved plan will result in an amendment to be reviewed and approved by City Council; (2) All signs shall meet site distance triangle and building code requirements, including clearance requirements for pedestrian and vehicular traffic; (3) All signage must comply with illumination standards as outlined in Articles 11 and 13 of the UDO; and (4) All signs in the project area shall comply with the proposed standards and no exceptions or variances are permitted. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 197**

**V. UNFINISHED BUSINESS:**

**A. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A THREE-YEAR CONTRACT WITH PONDERWELL, INC., FOR COMMUNITY MEDIA DEVELOPMENT SERVICES**

Public Information Officer Dawa Hitch said that this is the consideration of a resolution authorizing the City Manager to enter into a three-year contract with Ponderwell, Inc. for community media development services.

In May 2011, public access studio space provided by a third-party organization closed as a result of funding challenges. Due to the status of the organization, the City decided not to renew or extend its recently expired contract for public access management services. As an alternative, the City of Asheville and Buncombe County issued a joint Request for Proposals (RFP) for community media development services, projects or initiatives with an emphasis on: community development, economic and workforce development, industry development, and training and education.

The RFP was posted on July 1, and submissions were due by August 1. Nine submissions were received by the August 1 deadline. An evaluation panel of nine employees from the City of Asheville, Buncombe County and the Asheville Area Chamber of Commerce reviewed and scored the submissions during the month of August. Evaluators reviewed and scored proposals independently, and then scores were aggregated together to provide an average score for each submission.

Submissions were scored on a 100-point scale using weighted criteria, which included such factors as the potential of the project to achieve results consistent with goals outlined in the RFP, the extent to which the project would engage the public, and the appropriateness of the budget, funding support and sustainability strategy.

The City Council Finance Committee reviewed preliminary scoring results at its September 13, 2011, meeting and agreed with staff's recommendation to invite the top two scoring organizations to make presentations to the evaluation panel. Presentations were made on September 13, 2011, and scored on a 55-point scale. Points from the presentation were combined with the total scoring tabulation for the RFP process.

The overall scores for the top six submissions included:

| | |
|---|---|
| Ponderwell | 126.6 |
| Mountain Xpress | 111.5 |
| JB Media | 58.6 |
| American Green Media | 57.5 |
| Asheville Area Arts Council | 56.8 |
| Lakehouse Music | 55.9 |

After the presentation process, the evaluation panel noted that the top two scoring submissions were meritorious projects that would add considerable value to the region's growing multi-media industry and were worthy of funding consideration. Based on the point system, Ponderwell was the top scoring submission.

Ponderwell proposes to launch a web-based, community driven local news and information outlet that is driven by local writers, photographers and videographers.

Pros:

- Funds a project that could result in job creation and workforce training as well as community engagement.
- Proposes a funding model that encourages self-sufficiency within three years.

Con:

- Typical risks associated with any start-up project including delays in implementation, ability to deliver final product and/or maintain financial projections. The contract will include specific performance metrics to ensure funding aligns with expected deliverables.

The structure of the contract award is intended to provide seed funding to allow a new community media development initiative to achieve financial independence and sustainability within three years. During the three year award period, funding will be provided to Ponderwell according to the following schedule:

- Year 1 (Sept. 2011-Sept. 2012): $60,000
- Year 2 (Sept. 2012-Sept. 2013): $40,000
- Year 3 (Sept. 2013-Sept. 2014): $20,000
- After three years, funding will be discontinued.

Buncombe County and the City of Asheville will split the funding allocation each year, and each government will provide $30,000 in year 1, $20,000 in year 2, and $10,000 in year 3. In the FY 11-12 budget, the City has allocated $30,000 for community media services.

Based on the results of the RFP process, staff recommends that City Council approve the resolution authorizing the City Manager to enter into a three-year contract with Ponderwell, Inc. for community media development services.

Councilman Bothwell voiced concern that the proposals didn't meet their intent they desired when the Request for Proposals was created. He felt the proposals are more of an aggregator function for community media, which is already happening on blogs. He felt we are funding something that is already happening. Councilman Russell agreed.

When Councilwoman Manheimer asked what would happen to the funds if Council doesn't accept any proposal, Ms. Hitch said that the funds are part of the General Fund and can be used for anything.

Councilwoman Manheimer moved to not authorize the City Manager to enter into an agreement with Ponderwell and that the funds remain in the General Fund. This motion was seconded by Councilman Davis.

Rev. Lisa Landis stressed the importance of public access in Asheville and requested the equipment from URTV be used for the public. Ponderwell has stated that they will work with the community, not just in mentoring, and if they had our equipment, the community can continue to speak.

Ms. Amie Tracey, representing Ponderwell, said they don't want to just build a website, but to create a system that facilitates people getting involved in community journalism by creating an editorial process and mentorship program. They didn't put the equipment into the proposal because they felt like within the grant monies they really needed the money to build the system and build the community in order to get people involved. If there is anyway to incorporate the equipment they would certainly work with people to get it out into the community.

Rev. Christopher Chiaronmonte felt that the community needs a public forum and public access.

Dr. Milton Byrd explained why he was not in favor of the contract moving forward.

Mr. Michael Tracey, Chief Technical Officer of Ponderwell, said they are proposing a community-run on-line news editing system to allow all the people in the community to write niche news for the very small issues they are concerned with. They will let everyone have a voice by building a platform. They are also building educational and mentoring systems so the people who want to shoot video or audio or photography can work and build news articles on-line together.

Mr. Coleman Smith felt there is a huge digital divide of people that do not have access to internet.

Mr. Heywood spoke in support of the contract because it will be an opportunity to give people the opportunity to learn about the things they care about themselves.

Ms. Davyne Dial felt the proposal falls short of the four major objectives in the Request for Proposals and felt the contract was aimed at serving a small group of people who are already producing content in the community. This narrow and exclusive proposal offers little benefit to the community in a time when job creation is imperative.

Councilman Smith understood there was a lot of work in this process; however, there is so much accessibility to the internet now. He wanted to see more of the economic and workforce development objectives and more of the training and education pieces being accented. He questioned whether government should be funding an arm of journalism. Should Ponderwell be able to secure other funding for this, he wondered if Council might be willing to explore some kind of co-applicant on future grants using the City's equipment.

The motion made by Councilwoman Manheimer and seconded by Councilman Davis carried unanimously.

**VI. NEW BUSINESS:**

**A. COUNCIL DIRECTION ON PERMANENT ALLEY CLOSING BETWEEN NEBRASKA STREET AND NEVADA AVENUE**

**RESOLUTION NO. 11-212 - RESOLUTION SETTING A PUBLIC HEARING ON NOVEMBER 22, 2011, TO CONSIDER THE PERMANENTLY CLOSING OF AN ALLEY BETWEEN NEBRASKA STREET AND NEVADA AVENUE**

City Attorney Oast said that the street closure process is a two-step process with the first step being adoption of a resolution of intent to close and establishing a date for the public hearing. The public hearing would occur approximately four weeks later. He said there is more disagreement amongst the property owners that abut the alley than Council usually sees with respect to other street closures and he suggested those issues be addressed at the public hearing.

Public Works Director Cathy Ball said that staff is requesting direction from Council on the closure of an unopened alley between Nebraska Street and Nevada Avenue.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjacent property owners, Julia Watts Schafer, Edward V. Hardin, Jane P. Ward, Hannah Danise, Dewitt Hurst, Kandi Kilpatrick, Alexander Brown, Bonnie R. Locklear, Jack Askew and Katherine Folkman, and Joanne C Gunter have requested the City of Asheville to permanently close an alley between Nebraska Street and Nevada Avenue. In accordance with the City of Asheville Fees and Charges Manual, the applicants paid the City $4,000 to process this closure.

The Greenway Commission met on August 11, 2011. The Commission discussed various subject areas and voted 4-1 against supporting the closure.

The right to use or occupy the alley is a matter in litigation between some of the property owners abutting the alley, including the petitioners. The attorneys for the parties met with City staff, including City Attorney and the Assistant Planning Director, to review the closure process

and the implications of closure on the legal issue in the lawsuit. With their consent, further processing of the petition was delayed to allow additional time for the parties to try to resolve their differences, which might eliminate the need for the closure, or affect the form that it might take. The petitioners asked if they could be refunded the application fee of $4,000. The petitioners were informed that they would be able to get a refund on the application fee so long as the petition was withdrawn before any public notification or advertising occurred.

On September 23, 2011, Vice-Mayor Newman and Council Members Davis and Smith requested an item be placed on the agenda to provide policy direction.

The fee for a petition, which includes public notification and advertising, is $4,000.

Provide direction on the role of the City with regard to the alley closure. A resolution is provided should the Council wish to proceed with the public hearing.

Mayor Bellamy said that the normal process for a street closure would be to put the resolution of intent to close the alley and set the public hearing on the consent agenda and consider the details at the public hearing.

In response to Vice-Mayor Newman, City Attorney Oast said that Council's adoption of the resolution of intent to close the alley does not commit Council to close the alley.

Ms. Ball said that staff is asking for another clarification regarding the $4,000 application fee. The petitioners have submitted the application fee which covers the cost of advertising, public notice and staff time. That money has been deposited. Some petitioners are now requesting that money back since City Council is now the body requesting the closure. She asked for Council direction.

Vice-Mayor Newman said the primary issue is to set in motion the process to determine whether this paper alley should be closed or not. The second issue is the process question about whether this is a City Council initiated consideration or whether it is a citizen initiated process, noting there are arguments on both sides.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved to adopt Resolution No. 11-212, setting a public hearing on November 22, 2011. This motion was seconded by Councilman Smith.

Dr. Milton Byrd felt that just closing the alley does not solve the problem and suggested a plan of action to deal with the alley once closed.

In response to Mayor Bellamy, City Attorney Oast said that issue of the street closing is not in litigation, but there are disagreements amongst the neighbors about the appropriate use of the alley which is in litigation.

Mayor Bellamy felt this sounded like a private property rights issue. City Attorney Oast responded that Council is not being asked to adjudicate the rights of the neighbors and Council would not be taking sides. The request before Council is whether the City has an interest in keeping the alley open for any permissible purpose. He said the paper street has never been accepted by City and never used for public purposes.

In response to Mayor Bellamy, City Attorney Oast said that the $4,000 application fee covers the requirements for advertising for 4 consecutive weeks, which is expensive, and a lot of staff time in assessing whether the City has any interest in keeping the alley open.

In response to Mayor Bellamy, Ms. Ball said that typically an applicant comes in and makes a request for a closure and staff asks Council to adopt a resolution of intent to close and set the public hearing. The normal process is that it would have come to Council. Staff would have brought this to Council earlier but staff was asked to hold off so that the property owners could have a discussion and possibly come up with a resolution.

City Attorney Oast said the process and the costs are the same, regardless of who initiates the request. Staff met with the attorneys from both sides to make sure that they clearly understood the implications of the closing and the legal effect of it was.

Mayor Bellamy could not support the motion because she felt by Council's intervening sets a precedence, including a precedence of refunding the money that is to be used to cover our expenses. Council's parameters set at their retreat are for cost recovery. She felt Council should not intervene on this issue.

Vice-Mayor Newman felt it's the City's job to make a decision on whether that street should be built.

The motion made by Vice-Mayor Newman and seconded by Councilman Smith to set the public hearing on November 22, 2011, carried on a 6-1 vote, with Mayor Bellamy voting "no."

Vice-Mayor Newman moved to consider this action as a Council initiated request. This motion was seconded by Councilman Smith.

Mr. Jay Fiano, property owner who started clearing the alley, said that he started clearing the alley with the permission of the Building Safety Department, which issued him a grading permit. He did reach out to the neighbors but received no response until his grading began.

Ms. Julia Schafer, adjoining property owner, said that the neighbors have asked for evidence of the permits; however, the City said that permission and permits were never granted.

The motion made by Vice-Mayor Newman and seconded by Councilman Smith to consider this a Council initiated process carried on a 6-1 vote, with Mayor Bellamy voting "no."

**RESOLUTION BOOK NO. 34 – PAGE 184**

**B. BOARDS & COMMISSIONS**

**ABC Board**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, noted that the Commission recommended interviewing Mr. Jim Ellis on November 22 as his term expires November 13, 2011, and he is eligible for reappointment to the ABC Board. City Clerk Burleson advised that the term of Mr. Charles Worley, Chair of the ABC Board, will also expire on November 13, 2011, and that advertising for the vacancies will begin October 15.

**Board of Adjustment**

At Mayor Bellamy's request to re-advertise in order to try to reach racial diversity, it was the consensus of Council to re-advertise for unexpired regular seat term left by Ms. Kristy Carter, term to expire January 21, 2014. Alternates Richard Fort, Phillip Hardin, Doug Hattaway, Nelda Holder and James Sheeler have expressed interest in the regular seat; and David Nutter is the only individual who applied for the vacancy.

**RESOLUTION NO. 11-213 - RESOLUTION APPOINTING MEMBERS TO THE HOMELESS INITIATIVE ADVISORY COMMITTEE**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Homeless Initiative Advisory Committee (HIAC).

The terms of Tom Rightmyer, Stephen Bolden and Wanda Lanier will expire on November 1, 2011.

The following individuals have applied for the vacancies: Debbie Metcalf, Micheal Woods, Michael Akers, Marcie Walker and Chris Sullivan.

The HIAC recommended appointing Chris Sullivan and re-advertising for the other two remaining vacancies in order to give the HIAC an opportunity to interview any new applicants. The Boards & Commissions Commission concurs with their recommendation.

Vice-Mayor Newman moved to appoint Chris Sullivan to serve a three-year term, term to expire November 1, 2014, or until her successor has been appointed. This motion was seconded by Councilwoman Manheimer and carried unanimously (with Mayor Bellamy absent).

**RESOLUTION BOOK NO. 34 – PAGE 185**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Rev. Lisa Landis requested some of the URTV equipment so she can continue to record history and allow people's voices to be heard. She wanted government to be held accountable for things they are doing wrong.

Ms. Patricia Dockery, west Asheville resident, urged Council to revise the noise ordinance to restrict noise from 11:30 p.m. to 7:30 a.m. Vice-Mayor Newman noted that Council is in the process of looking at the noise ordinance and will consider her suggestion. In addition, Mayor Bellamy asked City Manager Jackson to contact Ms. Dockery to see if we can address her immediate concerns.

Rev. Christopher Chiaronmonte spoke about democracy and said that he would fast until City Council gives him five acres of land.

When Mr. James Smith requested a transcript of a specific 911 call, City Attorney Oast said that a copy of that requested transcript has been mailed to Mr. Smith; however, he would provide him with what was sent.

Ms. Melissa Porter, representing Moogfest, said that on October 28-30, 20-30,000 people will be coming into Asheville to attend Moogfest. Therefore, she asked City Council (1) for a temporary amendment to the banner pole-hanging policy that says only co-sponsored events and/or City-produced events can take advantage of that policy; and (2) to waiver the temporary sign policy for additional direction signage and larger directional signs. Mayor Bellamy instructed City Manager Jackson to work with Ms. Porter on her requests and report back to City Council at their next meeting on October 25.

**Occupy Asheville**

The following individuals urged City Council to waive the 10:00 p.m. park curfew that would permit Occupy Asheville a permanent place to camp to assemble 24 hours indefinitely within Pack Square Park/Roger McGuire, respecting their constitutional right to assemble and give the protests a peaceful outlet (noting that the WNC CLC AFLCOI will provide port-a-johns):

Dr. Milton Byrd
Chaplain Robert Zachary, former civil rights activist

Mr. Matthew Burd
Ms. Clare Hanrahan
Ms. Jennifer Foszer, attorney who has guided process (provided Council with petition alleged to contain over 350 signature from business owners, business managers and concerned citizens)
Mr. Timothy Sadler
Mr. Charles Rawls
Ms. Jessica Archer
Mr. Mark Case, President of the WNC CLC AFLCIO
Mr. Steve Arpin
Mr. Anthony Benton

Councilman Bothwell moved to all Occupy Asheville 24-hour occupancy of Pack Square Park/Roger McGuire subject to an agreement about health, safety and sanitation.

Councilwoman Manheimer was concerned about the other groups who have reserved the area a long time ago and have spent thousands of dollars for their events. She thought the request was for night-time occupancy only – not 24-hour occupancy. For night-time occupancy, she suggested the Public Works Facility parking lot.

At the request of Councilman Smith, Councilman Bothwell withdrew his motion so any concerns could be addressed in a possible motion.

In response to Mayor Bellamy, Director of Building Safety Robert Griffin relayed to Council several events booked at Pack Square Park between now and October 25, at which time the park is scheduled for one month of re-seeding to re-generate, as it experiences a lot of activity which damages the grass.

Councilman Davis was sympathetic to the cause and wanted to help, but asked that people realize the Pack Square Park has come at a great price with a lot of small donations to build the park with still quite a bit of debt to keep it going. The Park was not designated as an overnight camping spot. He felt the suggestion of the Public Works Facility parking lot for overnight camping was a good suggestion.

Vice-Mayor Newman explained that first amendment rights are not always simple, citing the bullhorns used by pastors at Bele Chere. The City has had extensive public input to develop the rules for all our public parks. Currently our policy is that our public parks are not open all night. The policy was not developed for the special reason of denying people political expression rights, but sincerely developed with public safety issues in mind. Based on the processes we have in place, he would not be comfortable in simply discarding all the public involvement we've had to develop the policies today at this meeting. He would like to see City staff work with representatives from Occupy Asheville to see if there is a mutually acceptable place. He also noted that we must treat everyone the same and if we create a first amendment area that is different than all our other parks, it will have to be for anyone, not just for one organization. Councilman Russell agreed.

Councilman Smith appreciated the peaceful nature of the group and reaching out to Council. The theme that resonates with him is patience, understanding and dialogue. Those values can help guide the process. As an elected official, his responsibility is to ensure public health, safety and other things.

Councilman Bothwell suggested Aston Park for overnight camping; however, understanding that it doesn't fit the purpose of Occupy Asheville which want to be located downtown. He felt that as the City looks to find a suitable location that we not drag our feet to address this issue.

Mayor Bellamy felt Council needed to direct staff to gather recommendations and report back to Council. She recommended Council not make a decision at this meeting without allowing staff to have an opportunity to find a suitable location, working not only with Occupy Asheville, but with neighborhood representatives who are not members of Occupy Asheville. We have listened to Occupy Asheville supporters for almost one hour and if Council decides at this meeting an overnight camping area, Council will hear from others who don't agree with that location. As we deliberate this process, Council needs to make a choice that is a win/win for the community. She said that when someone occupies a space for 24-hours that is not designed for that, neighbors or business owners need to have their voices heard.

Councilman Smith agreed that an indeterminate length of time is something that needs to be considered, but wants Council to address this in a timely manner.

Councilwoman Manheimer voice concern that this item is not on Council's agenda and the community has not had the opportunity to speak with Council, other than supporters of Occupy Asheville. She would be willing to consider giving the City Manager to authority to work with Occupy Asheville to find a temporary location for overnight camping, until Council can hear the recommendations from City staff at their October 25 meeting. She did not support using Pack Square Park/Roger McGuire as there are already scheduled events.

In response to Councilman Russell, City Manager Jackson said that staff will work within Council policies. What is possible, within the current framework, is along the lines of what Seattle's Mayor decided to do, and that is not to create an exception to their park policy, but rather find public property wherein the public can convene. That way Council s not violating their stated park policy. To the extent that the organizers would want to come forward with a permit, and act like any other group that wants to rent and reserve and reasonably comply with the standards, we can make parks available under a permit process. My understanding there is an application pending to use Pritchard Park for three hours on Sunday and we are expediting the review of that. Staff will work within Council's park policies and offer creative opportunities to make public space, that is not park space, available. We will also work to avoid conflict with business hours and make those safety provisions. Again, staff's goal would be not to make policy, but find a creative solution within the policies.

City Manager Jackson noted that if we are going to make public property available, we must make it available to the entire public. We will not reserve public property for the exclusive use of any one group.

Mayor Bellamy thanked Occupy Asheville supporters for attending the meeting. She noted that with regard to the request for Council to dialogue, City Council goes to different parts of the community to hear concerns. Asheville is a very inclusive community. When it comes to dialogue, there are more outlets in Asheville for dialogue than in any other parts of the State. Regarding issues involving the Police Department, we have a Citizens/Police Advisory Committee that is made up from community residents, along with a Police Academy for citizens. A City Council meeting is not the only forum for input. She stressed that Asheville has more non-profits per capita than anywhere else in North Carolina and we have a lot of people who dedicate their time to help kids graduate from high school, Manna Food Bank sends food all over North Carolina, Mountain Housing Opportunities works on affordable housing, etc. So, as Occupy Asheville articulates who you are, don't do that in isolation of other people who are working in our community as well. What you are trying to accomplish is important, but don't negate the efforts of others in our community who are also working on the issues near and dear to other people's hearts. She hoped they understand that Council is willing to work with them and when this matter is before Council again in two weeks that Occupy Asheville be open to hear other citizens voices about their concerns. She also noted that statements about other city mayors have a different form of government where the mayor has the final say; however, this is not a proclamation, which is a ceremonial document that she has authority to declare herself. She cannot authorize a group to use a park 24-hours indefinitely. She said this is not the end of the conversation.

It was the consensus of Council to direct the City Manager to work with Occupy Asheville representatives to find a temporary location for overnight camping, until Council can hear the recommendations from City staff at their October 25 meeting.

**Lawsuit**

The City received a Complaint on October 5, 2011, from Brittany Rose Sams vs. City of Asheville, Officer James A. Boyce, in his individual and official capacity. The Complaint is negligence and the Plaintiff requests a trial by jury. This matter will be handled by an attorney outside the city Attorney's Office.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 8:11 p.m.

Magdalen Burleson
CITY CLERK

Jan Mayor Bellamy
MAYOR

Tuesday – October 25, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr. (arrived in meeting at 5:59 p.m.); Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Boy Scout Troop 91 sponsored by St. Paul's United Methodist Church led City Council in the Pledge of Allegiance.

**INVOCATION**

Vice-Mayor Newman gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING NOVEMBER 2011 AS "ADOPTION AWARENESS MONTH"**

Mayor Bellamy read the proclamation proclaiming November, 2011, as "Adoption Awareness Month" in the City of Asheville. She presented the proclamation to Ms. Becky Kessel who briefed City Council on some activities taking place during the month

**B. PROCLAMATION PROCLAIMING NOVEMBER 5, 2011 AS "AIDS AWARENESS WALK 2011 DAY"**

Mayor Bellamy read the proclamation proclaiming November 5, 2011, as "AIDS Awareness Walk 2011 Day" in the City of Asheville. She presented the proclamation to Ms. Sarah Tennyson, Youth Outreach Specialist at the WNC AIDS Project, and Mr. Jeff Bachar, Executive Director of the WNC AIDS Project. Mr. Bachar briefed City Council on some activities taking place during the day. Mayor Bellamy also congratulated Mr. Bachar to Asheville.

**C. PROCLAMATION PROCLAIMING NOVEMBER 13, 2011, AS "CITY SCHOOLS CHAMPIONS DAY"**

Mayor Bellamy read the proclamation proclaiming November 13, 2011, as "City Schools Champions Day" in the City of Asheville. She presented the proclamation to the Lake Eden Arts Festival in Schools and Streets; Loraine Martin; the Community Foundation of Western North Carolina, The I Have A Dream Foundation Asheville; the Asheville Police/Fire Department's Back to the Basics Program; the late Captain Jeffrey Bowen; Asbury Memorial United Methodist Church; Pastor Lisa Hartzog Hannah; Ruth Paar; Mark Ackerman; and Ruth Belcher. She recognized Asheville City Schools Foundation Board President Betsy Russell who thanked City Council for their support.

**D. PROCLAMATION PROCLAIMING NOVEMBER 13, 2011 AS "UNC-ASHEVILLE BULLDOG DAY"**

Councilman Davis read the proclamation proclaiming November 13, 2011, as "UNC-Asheville Bulldog Day" in the City of Asheville. He presented the proclamation to Mr. Mike Gore,

Associate Athletics Director for External Affairs, who briefed City Council on some activities taking place during the day.

**II. CONSENT AGENDA:**

At the request of Councilwoman Manheimer Consent Agenda Item "C" was removed from the Consent Agenda for an individual vote due to a conflict of interest.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 11, 2011**

**B. RESOLUTION NO. 11-214 - RESOLUTION AUTHORIZING THE PURCHASE OF AN EXTRACTOR AND REMITTANCE PROCESSOR FOR CUSTOMER SERVICES FROM SINGLE SOURCE VENDOR CREDITRON**

Summary: The consideration of a resolution authorizing the purchase of an Extractor and Remittance Processor for the City's Water Resources Department Customer Services Division, from Creditron Inc., for approximately $160,000.00, without requesting formal bids pursuant to NCGS §143-129.

NCGS §143-129(e)(6) (ii)(iii), allow purchases without formal bidding when a needed product is available from only one source of supply and when standardization or compatibility is the overriding consideration.

The Customer Services Division currently uses two separate machines, a remittance processor and an extractor, to process approximately 1,250 utility bills daily. The current machines break down on a regular basis and have exceeded their useful life. Purchasing new equipment, in lieu of leasing it, makes more financial sense. Creditron is the single source of supply for the City's needed Extractor and Remittance Processor. Additionally, standardization and compatibility of the City's existing software with Creditron's equipment is an overriding consideration for purchasing from Creditron.

Water Resources staff consulted with the Information Technology and Purchasing Departments to recommend the purchase from Creditron due to single source supply and compatibility issues with the existing software and conversion to the new equipment. All parties agreed that Creditron should be the recommended source. The funds for this purchase exist in the Water Operating Budget, following City Council approval on 9/13/11.

This project is part of City Council's strategic plan to improve city infrastructure and to operate at the highest levels of fiscal responsibility.

Pro:

- Awarding the purchase contract to Creditron for the mail processing equipment and authorizing the purchase without requesting formal bids for standardization and/or compatibility eliminates software compatibility issues.

Con:

- None.

The funding needed for this purchase is currently allocated in the Water Resources' Operating budget.

City staff recommends City Council adopt a resolution authorizing the City's Water Resources Department Customer Services Division to purchase the Creditron extractor and remittance processor for approximately $160,000.00 based on their standardization needs.

C. **RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICE AGREEMENT WITH W.K. DICKSON & CO., INC., FOR THE CHALLEDON SUBDIVISION WATER LINE EXTENSION PROJECT**

**RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICE AGREEMENT WITH MCGILL ASSOCIATES FOR THE OLD HAW CREEK AND RIDDLE ROAD WATER LINE EXTENSION PROJECTS**

**RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL AGREEMENT WITH MICHAEL BAKER ENGINEERING, INC., FOR THE GROVEMONT SUBDIVISION WATER LINE EXTENSION PROJECT**

**BUDGET AMENDMENT TO COMBINE TWO SEPARATE CAPITAL PROJECTS WITH THE SAME NAME OF OLD HAW CREEK INTO ONE CAPITAL PROJECT FOR OLD HAW CREEK**

These items were removed from the Consent Agenda for an individual vote due to a conflict of interest by Councilwoman Manheimer.

D. **RESOLUTION NO. 11-218 - RESOLUTION EXEMPTING THE NORTH FORK WATER TREATMENT PLAN DAM / TUNNEL EVALUATION PROJECT FROM THE ANNOUNCEMENT REQUIREMENT OF N.C. GEN. STAT. SEC. 143-64.31 AND AWARDING THE PROJECT TO SCHNABEL ENGINEERING**

Summary: The consideration of a resolution exempting the North Fork Water Treatment Plant Dam/Tunnel Evaluation Project from the architectural, engineering and surveying announcement requirement of NCGS §143-64.31.

NCGS §143-64.32 allows a local government to exempt particular projects from the requirements of NCGS §143-64.31, that has requirements for architectural, engineering, and surveying services be announced. For several years, Water Production has used Schnabel Engineering to inspect the dams at the North Fork and William DeBruhl water plants and make recommendations for repairs or improvements. Schnabel Engineering has also developed an Emergency Action Plan (EAP) for Asheville to address several scenarios involving dam failures. Schnabel is recognized as an expert engineering firm specializing in dam design, construction, and maintenance.

Schnabel provided an Engineering proposal for spillway, conduit, and gate evaluations and EAP training for the North Fork Dam. The proposal consists of: (1) evaluating alternatives to address the spillway capacity at a cost of $51,800.00, (2) a structural evaluation of the outlet works conduit at a cost of $88,300.00, (3) evaluating the North Fork Dam spillway gates by performing gate inspections and a structural analysis of the gates at a cost of $34,300.00, and (4) conducting EAP training for plant staff at a cost of $14,900.00. This proposal from Schnabel Engineering is the most qualified proposal from a firm that has a proven successful track record to complete the dam/tunnel evaluation project.

This project is part of City Council's strategic plan to improve city infrastructure and to operate at the highest levels of fiscal responsibility.

Pro:

- Recognize Schnabel Engineering as the most qualified engineering firm to perform the North Fork WTP Dam / Tunnel Evaluation by exempting the project from the announcement requirement of NCGS §143-64.31.

Con:

- None.

The funding needed for the evaluation is currently allocated in the Water Resources Capital Improvement Projects fund.

City staff recommends City Council adopt a resolution to exempt from the statutory announcement requirement of NCGS §143-64.31, the North Fork Water Treatment Plant Dam / Tunnel Evaluation Project and authorize the awarding of a contract to Schnabel Engineering in an amount not-to-exceed $189,300.00.

**RESOLUTION BOOK NO. 34 – PAGE 190**

**E. ORDINANCE NO. 4028 - ORDINANCE AMENDING THE EFFECTIVE DATE OF THE VOLUNTARY ANNEXATION OF 55 PINEY MOUNTAIN DRIVE TO OCTOBER 25, 2011**

Summary: The adoption of an ordinance amending the effective date of the annexation of property located at 55 Piney Mountain Drive.

On September 27, 2011, the City Council of the City of Asheville adopted an ordinance annexing property located at 55 Piney Mountain Drive. Asheville Retirement Residence, LLC had petitioned the City for the annexation of this property which contains a total of 13.52 acres on which a 120 suite retirement residence, Bella Vista, has been constructed. November 30, 2011, was set as the effective date for this annexation.

It was subsequently called to the attention of staff that the North Carolina General Assembly amended the statutes dealing with voluntary annexation this past summer. In this amendment they provided that the effective date for a voluntary annexation must be either on the date of the passage of the ordinance or on June 30th of the following year after the date of passage of the ordinance.

The ordinance revises the effective date to be on the date of adoption of this ordinance, October 25, 2011. The petitioner is aware of this change.

Pros:

- Provides for the orderly growth of the City and the tax base through the acceptance of appropriate areas into the corporate limits where owners desire annexation.
- Complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas.
- Allows for service provisions for a new retirement community that would benefit from an urban level of service.

Con:

- Marginal costs for patrol.

The property located at 55 Piney Mountain Drive is valued at $12,813,700. This property is currently serviced by the City of Asheville Fire Department under the Haw Creek Fire District agreement. As such, the City receives a share of the Haw Creek Fire District property tax revenue based on the property's value. If the property were to remain outside the City, the City would receive $11,532 in revenue annually from the Haw Creek Fire District property tax. Once the property is annexed, it will no longer be subject to the 9-cent Haw Creek Fire District tax; instead, the property will be subject to the City of Asheville's 42 cent property tax rate. Therefore, the City will receive $53,817 annually in property tax revenue once the property is annexed. The

net tax revenue gain from the annexation is $42,285. As noted above, cost impacts from this voluntary annexation are minimal.

City staff recommends City Council adopt the ordinance amending the effective date of the annexation of 55 Piney Mountain Drive to October 25, 2011.

**ORDINANCE BOOK NO. 27 – PAGE 205**

**F. RESOLUTION NO. 11-219 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MOORE AND SON SITE CONTRACTORS INC. FOR THE PROJECT KNOWN AS TUNNEL ROAD US 70, 74A & KENILWORTH ROAD SIDEWALK IMPROVEMENTS**

Summary: The consideration of a resolution authorizing the City Manager to execute a contract (and all change orders in the amount of 15% of the contract or $15,300) with Moore and Son Site Contractors, Inc. in the amount of $101,972.50 for the project known as Tunnel Road US 70, 74A & Kenilworth Road Sidewalk Improvements, Project # ENG -10-11-003.

A formal request for bids was issued on August 12, 2011, and bids were opened on September 6, 2011. Due to the receipt of only 2 bids, the project was rebid informally. These bids were opened on September 15, 2011. A local contractor, Moore & Son Site Contractors, located in Mills River, N.C., was the low bidder with an amount of $101,972.50. With the addition of a 15% contingency, the total budgeted amount for this project is $117,268.38. This will be a unit price contract and not a lump sum contract and is part of the City of Asheville's CIP program.

This action complies with the City Council Strategic Operating Plan of Multimodal Transportation in that it will meet the need of increasing the output of sidewalk construction and provide sidewalk in an area that is in need of sidewalk linkage.

Pros:

- Provides a pedestrian linkage by connecting existing sidewalks.
- Will be a step forward in meeting the City's Strategic Plan and current fiscal year CIP goals.
- Is listed as an identified need on the City of Asheville pedestrian plan.

Cons:

- Project management and contract administration will consume staff time and city funds.
- Temporary lane and driveway closures.

This project is part of the $1.3 million sidewalk construction program that City Council approved as part of the FY 2011-12 Capital Improvement Budget. Funding will come from debt proceeds.

Staff recommends City Council authorize the City Manager to execute on behalf of the City of Asheville a contract with Moore and Son Site Contractors, Inc. in the amount of $101,972.50 for the project known as Tunnel Road US 70, 74A & Kenilworth Road Sidewalk Improvements, and all change orders in the amount of 15% of the contract or $15,300.

Assistant Director of Public Works David Foster responded to Councilman Smith's inquiry about the description and linear feet of the project.

**RESOLUTION BOOK NO. 34 – PAGE 191**

**G. RESOLUTION NO. 11-220 - RESOLUTION TO PROCEED WITH PLANNING AND IMPLEMENTATION OF BOND FINANCING AND APPROVING THE FINANCING TEAM**

Summary: The consideration of a resolution directing the City Manager and Finance Director to pursue debt financing for capital projects and refinancing existing debt in Fiscal Year 2012, and to appoint bond counsel and the managing underwriter for the transaction.

On July 26, 2011, City Council adopted a reimbursement resolution for several debt issuances planned as one transaction in Fiscal Year 2012: (1) the issuance of "new money" for Council approved capital projects authorized as part of the Fiscal Year 2012 and Fiscal Year 2011 Budgets, (2) the takeout of the interim note on the 51 Biltmore Parking Deck project and (3) the refinancing of some existing debt to achieve financial savings.

As a next step in the process, staff is seeking City Council's approval of a resolution appointing Parker, Poe, Adams & Bernstein as bond counsel and Merrill Lynch, Pierce, Fenner & Smith as the managing underwriter for the transaction. These recommended appointments are being made on the basis of qualifications, familiarity with the City's finances and capital planning and in the case of the managing underwriter, having provided the lowest cost financing for the 51 Biltmore Parking deck project interim financing. The resolution also authorizes the City Manager and Finance Director to retain other members of the financing team as necessary.

Pro:

- Allows the City to move forward with the FY 12 debt financing.

Con:

- None noted.

This action supports the City of Asheville's goal to operate the City to the highest level of fiscal responsibility by enhancing its commitment to infrastructure maintenance and capital improvements.

Staff recommends that City Council approve the resolution as it is proposed.

**RESOLUTION BOOK NO. 34 – PAGE 192**

**H. RESOLUTION NO. 11-221 - RESOLUTION AUTHORIZING THE CITY MANAGER TO DESIGNATE OBSERVERS FOR THE DETERMINATION OF RESULTS OF THE PETITIONS REGARDING THE BILTMORE LAKE ANNEXATION**

Summary: The consideration of a resolution authorizing the City/ Manager to designate three observers for the determination of results of the petitions regarding the Biltmore Lake annexation.

As Council knows N.C. Sess. L. 2011-173, adopted this past summer, makes the Biltmore Lake annexation subject to the "petitioned denial" process that is a new feature of the annexation law. In essence, the law provides that if the owners of 60% of the parcels in the annexation area submit a petition opposing the annexation, the annexation is terminated. This process was made applicable to several annexations already in process, including Asheville.

The law provides that the determination of the results of the petition, to be performed by the local Board of Elections, should be observed by three property owners from the annexation area, and three persons designated by the municipality. The resolution will authorize the City Manager to make that designation. The persons selected will likely be City employees who have some expertise in such matters.

Pro:

- Complies with statute.

Con:

- None noted.

Adoption of the resolution is recommended.

**RESOLUTION BOOK NO. 34 – PAGE 193**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Manheimer moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Smith and carried unanimously (with Councilman Russell absent).

**ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

C. **RESOLUTION NO. 11-215 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICE AGREEMENT WITH W.K. DICKSON & CO., INC., FOR THE CHALLEDON SUBDIVISION WATER LINE EXTENSION PROJECT**

**RESOLUTION NO. 11-216 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICE AGREEMENT WITH MCGILL ASSOCIATES FOR THE OLD HAW CREEK AND RIDDLE ROAD WATER LINE EXTENSION PROJECTS**

**RESOLUTION NO. 11-217 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL AGREEMENT WITH MICHAEL BAKER ENGINEERING, INC., FOR THE GROVEMONT SUBDIVISION WATER LINE EXTENSION PROJECT**

**ORDINANCE NO. 4027 - BUDGET AMENDMENT TO COMBINE TWO SEPARATE CAPITAL PROJECTS WITH THE SAME NAME OF OLD HAW CREEK INTO ONE CAPITAL PROJECT FOR OLD HAW CREEK**

At Councilwoman Manheimer's request, Councilman Smith moved to recuse Councilwoman Manheimer from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously (with Councilman Russell absent).

Summary: The consideration of a resolution authorizing the City Manager to enter into three professional service agreements for the Water Line Extension Project: (1) W.K. Dickson & Co., Inc. in the not-to-exceed amount of $111,000.00 for Challedon Subdivision; (2) McGill Associates, PA in the not-to-exceed amount of $125,800.00 for Old Haw Creek and Riddle Road; and (3) Michael Baker Engineering, Inc. in the not-to-exceed amount of $222,055.00 for Grovemont Subdivision; and a technical budget amendment in the amount of $500,000 to combine two separate capital projects with the same name of Old Haw Creek into one capital project for Old Haw Creek.

The City of Asheville Water Resources Department identified four Neighborhood Waterline Replacement Projects for the current fiscal year and is seeking engineering design and project management assistance with these projects. The four projects are known as: Challedon Subdivision, located west off Dogwood Road; Riddle Road, located east off Bee Tree Road; Old Haw Creek area; and Grovemont Subdivision, located east off Old US Hwy 70. These projects will replace existing substandard and failing waterlines in favor of new waterlines, designed and constructed in accordance with the City of Asheville standards.

On August 3, 2011, Water Resources issued a Request for Qualifications (RFQ) for engineering services related to the design and contract administration for these projects. In response to the RFQ, Water Resources received 13 proposals. Companies responding were:

1. Alliance Consulting Engineers, Inc. – Columbia, SC
2. Brooks Engineering Associates – Asheville, NC
3. Cavanaugh & Associates, P.A. – Asheville, NC
4. David D. Smith & Company, PLLC – Asheville, NC
5. Mattern & Craig, Inc. – Asheville, NC
6. McGill Associates – Asheville, NC
7. Mercer Design Group – Weaverville, NC
8. Michael Baker Engineering, Inc. – Asheville, NC
9. Robinson & Sawyer, Inc. – Gastonia, NC
10. The Wooten Company – Raleigh, NC
11. Vaughn & Melton Consulting Engineers – Asheville, NC
12. Willis Engineers – Charlotte, NC
13. W. K. Dickson & Co., Inc. – Charlotte, NC

Water Resources initially planned for one engineering firm to design and manage all four waterline projects. However, due to their size and scope staff decided to divide the engineering portion into three separate contracts.

A review team, comprised of Water Resources staff, reviewed each proposal, selected three firms for the engineering services contracts, and negotiated contract amounts for the following firms: (1) W.K. Dickson & Co., Inc. in the not-to-exceed amount of $111,000.00 for Challedon Subdivision; (2) McGill Associates, PA in the not-to-exceed amount of $125,800.00 for Old Haw Creek and Riddle Road; and (3) Michael Baker Engineering, Inc. in the not-to-exceed amount of $222,055.00 for Grovemont Subdivision.

This project is part of City Council's strategic plans to improve city infrastructure.

Pros:

- The selected engineering firms have provided Engineering Services on numerous water system improvement projects for the City of Asheville. Their experience and knowledge of our water system will minimize staff support and input during the design process.
- These projects will provide water customers with a more reliable drinking water source and much improved fire protection.

Con:

- Failure to award an engineering services contract would prevent Water Resources from completing the adopted Capital Improvement Projects Plan in a timely manner and delay the replacement of aging infrastructure.

The funding needed for each of these projects is currently allocated in the Water Resources' Capital Improvement Projects budget. The technical budget amendment included with this staff report will combine two separate capital projects with the same name of Old Haw Creek into one capital project for Old Haw Creek.

City staff recommends City Council approval of the City Manager to enter into three professional service agreements for the Water Line Extension Project: (1) W.K. Dickson & Co., Inc. in the not-to-exceed amount of $111,000.00 for Challedon Subdivision; (2) McGill Associates, PA in the not-to-exceed amount of $125,800.00 for Old Haw Creek and Riddle Road; and (3) Michael Baker Engineering, Inc. in the not-to-exceed amount of $222,055.00 for Grovemont Subdivision; and a technical budget amendment in the amount of $500,000 to combine two separate capital projects with the same name of Old Haw Creek into one capital project for Old Haw Creek.

Councilman Bothwell moved to adopt Resolution Nos. 11-215, 11-216 and 11-217. This motion was seconded by Councilman Davis and carried unanimously (with Councilman Russell absent and Councilwoman Manheimer recused).

Councilman Bothwell moved to adopt Ordinance No. 4027. This motion was seconded by Councilman Davis and carried unanimously (with Councilman Russell absent and Councilwoman Manheimer recused).

**RESOLUTION NO. 11-215 - RESOLUTION BOOK NO. 34 – PAGE 187**
**RESOLUTION NO. 11-216 - RESOLUTION BOOK NO. 34 – PAGE 188**
**RESOLUTION NO. 11-217 - RESOLUTION BOOK NO. 34 – PAGE 189**
**ORDINANCE BOOK NO. 27 - PAGE 203**

## III. PRESENTATIONS & REPORTS:

### A. BLUE RIDGE PARKWAY OVERLOOK FOR ASHEVILLE

Mr. Phil Francis, Superintendent of the Blue Ridge Parkway, said they were asked by the Buncombe County Commissioners to consider adding an overlook on the Blue Ridge Parkway. Once they received the request, Mr. J. David Anderson, Resident Landscape Architect/GIS & GPS Coordinator for the National Park Service Blue Ridge Parkway, looked to see if there was a place where an overlook might be constructed.

Mr. Anderson explained that they looked at the height of the buildings in downtown Asheville and projected where you could see the Parkway if you were on the top of those buildings. Because of vegetation, there are only a few places that were appropriate. Using a location map, he explained why the location selected was at Mile Post 394.5 – south 8.2 miles from the center of downtown. He also used a map to show Council the existing site.

Mr. Francis stressed that this is not a project in their system yet. They will have to describe the project and put it into their National Park Service System and it will have to compete with other projects for funding for planning/design work, need to compliance work, and construction work. They are willing to move forward, especially since in the near future they will begin doing a planning effort in the Asheville area looking at parking, overlooks, trail connections, greenways, etc. He felt it was a good time to consider this project.

Mayor Bellamy thanked Mr. Francis for their consideration of this overlook and also for their new and expanded Center on the Parkway in Asheville. She asked Mr. Francis to keep City Council updated on their efforts.

### B. REPORT ON LEAF COLLECTION

Public Works Director Cathy Ball updated City Council on the status of the city's leaf collection program following changes implemented this fiscal year that included the elimination of loose leaf collection.

She said changes to the leaf and brush collection program were submitted as part of the budget that was adopted by City Council in May 2011.

She said that as part of the budget, which was adopted in May 2011, the frequency of brush collection was increased from once per month to twice per month. Loose leaf collection by vacuum trucks was replaced with bagged leaf collection twice per month.

Challenges in vacuuming include (1) maintenance of equipment (a) annual cost - $55,000; (b) average age of vehicles – 18 years old; and (c) impacts on schedule; (2) weather impacts ability to provide service; (3) roadway/pedestrian hazards; (4) impacts of leaves in storm drain system (a) flooding; and (b) water quality; and (5) servicing 30 to 50% of priorities.

It was changed for (1) increase in collection frequency; (2) more reliable collection schedule; (3) safer roads; (4) safer sidewalks and bicycle lanes; (5) improve water quality and flood control; and (6) financial benefits.

Our planned/budgeted service delivery methods are (1) brush and leaves are collected every two weeks; (2) large, durable bags are available at fire stations free of charge; (3) crews empty leaves from bags and the bags are left on-site to be reused; and (4) leaves are taken to a facility for mulching.

If people are physically unable to bag leaves; (1) when leaves are mowed, leaves can be mowed; (2) neighbors can help neighbors – City staff is working with church groups and other organizations to encourage a network for assistance; and (3) community resources may be available, 2-1-1 is a resource people can use to see if they meet the criteria for available resources.

Regarding public outreach, the goals of the communication plan are (1) communicate the change in service; (2) share information about the benefits; (3) encourage community participation in a network to assist people with physical limitations.

Communication tools include website, press release, videos, Facebook, twitter, mailers, reminder postcards, letter to contractors/residents, messages to community and neighborhood groups, and reminder letters to residents (education not punitive).

Option are (1) continue with planned/budgeted level of service; (2) restore basic level of service; (3) establish a preferred level of service; or (4) establish an "on-call" loose leaf service.

The basic level of service would include (1) leaf collection twice a season through March; (2) 8 trucks – 4 from other departments – 4 new trucks; (3) $110,000 – annual seasonal employees; (4) $320,000 – capital (7 year replacement); and (5) budget amendments for operating and Capital Improvement Plan (CIP) budgets.

The preferred level of service would include (1) leaf collection once a month through January or February; (2) 12 trucks – 4 from other departments – 8 new trucks; (3) $150,000 – annual seasonal employees; (4) $640,000 – capital (7 year replacement); and (5) budget amendments for operating and CIP budgets.

"On-call" service would require (1) RFP for competitive bids; (2) three to five year contract with one or multiple vendors; (3) user-fee based on full-cost recovery; and (4) budget amendment for operating budget and fee schedule change.

Cities that do not collect loose leaves are Denver, Seattle, Boston and Austin. They have more stringent environmental regulations. Best practices for sustainability are to mulch or compost leaves.

Council direction requested is (1) continue with planned/budgeted level of service; (2) pursue one of the described levels of service, including appropriate budget amendments; (3) establish an "on-call" fee-for-service program; or (4) timeline for bringing preferred options back to Council.

In response to Councilman Bothwell, Ms. Ball said that it is possible to do an "on call" service with existing trucks with a service fee, but she would have to look at what that cost would be.

In response to Vice-Mayor Newman, Solid Waste Manager Wendy Simmons said that the costs outlined by Ms. Ball are additional costs beyond what we are using for brush/leaf collection now.

When Mayor Bellamy asked if we had any locations for residents to bring their leaves for composting, Ms. Simmons said that there are no City-operated sites; however, there are private facilities in town that do accept leaves.

Mayor Bellamy felt there was no opportunity for transition from picking up loose leaves to having to bag leaves. She suggested the Finance Committee review this issue to see if they can locate some funds for a hybrid system (with no additional fee for service) because some residents physically cannot bag their leaves. She does not support the bagged leaves option only. She felt that collection of leaves is a city function covered by property taxes and residents should not have to pay an additional fee for that service now.

Councilman Bothwell noted that we currently have an "on call" service for large objects for a minimal fee of $5.

Councilwoman Manheimer supported sending this to the Finance Committee to explore a blend of bagged leaves and some capital investment for new trucks. Another idea is whether we want to contract out the entire brush and leaf collection program, and then the City wouldn't have to make the capital investment for the equipment.

Councilman Smith said there is at least one business ramping up composting of yard waste in the City and there may well be others. He felt it would be a good idea to research to see if there is a company that wants the leaves.

Vice-Mayor Newman supported the issue being sent to the Finance Committee. He felt that there are other types of basic cleanliness and sanitation services in the City that Council would like to see more investments in, e.g., sidewalk restoration. We need to clearly have more things like that happening in the City as a whole and that will take some money too, in addition to volunteer efforts. Those things benefit everyone. Regarding the leaf collection service is that it is a City service and if we fully pay for that service ourselves (opposed to having some part of it on-call) is that it does very disproportionately benefit different property owners. He felt this would be a case for some role of basic service, but then if some people are requiring more service than others, then maybe there is some way to partially pay for that so that we can make sure that we are spending enough of funding on the types of City cleanliness initiatives that really benefit the community broadly.

Councilman Davis felt that by the time this issue goes to the Finance Committee and then back to Council, we will be a good way through leaf season. He felt we should try to move forward with the present bagged leaf collection system, and let the community know that the Finance Committee is reviewing the matter and there may be some fees that might be levied. Another concern about loose leaves is when people sweep their leaves to the curb, it takes sometimes 2-3 weeks for the vacuum truck to collect them, and if it rains they are very slick and stop up storm drains.

At this time (5:59 p.m.), Councilman Russell arrived at the meeting.

In response to Councilman Davis, Ms. Ball said that it would take 6-9 months from the time we order a new vehicle to receive it. She said we would miss this leaf season if any change is made if it included new vehicles.

It was the consensus of Council to refer this matter to the Finance Committee.

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT FOR FOUR SEASONS PLAZA, LOCATED AT 1011 TUNNEL ROAD**

**ORDINANCE NO. 4029 - ORDINANCE AMENDING THE CONDITIONAL USE PERMIT FOR FOUR SEASONS PLAZA, LOCATED AT 1011 TUNNEL ROAD**

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

City Attorney Oast asked if any Council member has any special knowledge associated with this project that they disclose it at this time. Mayor Bellamy said that she was on City Council when this project went through the conditional use permit process. She stated that she would consider this issue with an open mind on all the matters before her without pre-judgment and she they will make her decision based solely on what is before Council at the hearing.

Regarding a potential conflict of interest, Councilwoman Manheimer stated that HomeTrust Bank is a client in her law firm; however, the applicant is not the bank. It was the opinion of City Attorney Oast that Councilwoman Manheimer did not have a conflict of interest.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:04 p.m.

Urban Planner Blake Esselstyn submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Esselstyn said that this is the consideration an amendment to a conditional use permit for Four Seasons Plaza, located at 1011 Tunnel Road, to include additional property to support a new configuration for the bank drive through.

The Four Seasons Plaza project was originally approved as a Conditional Use Permit in 2005. The applicant is now seeking to reconfigure the bank drive-through, extending the vehicular use area to the east, onto a parcel that was not originally part of the Conditional Use Permit (CUP) (Location and Aerial Maps – Attachments to City Exhibit 3). This change requires an amendment to the CUP, necessitating the technical review and Council hearing.

After the initial approval in early 2005, the project was required to have an amendment of the CUP in the summer of 2005 to alter the access on the west side, extending the vehicular use area onto the adjacent parcel, and creating an access easement. This 2011 amendment is somewhat similar, altering the access on the east side, and adding new property to the area subject to the conditional overlay.

Subsequent to the approval of the CUP in summer of 2005, the property owner sought to add the drive-through use, not shown in the earlier submittals. This modification simply underwent staff review, as it was not seen as significant enough to warrant re-review by City Council and did not extend the boundary of the project or involve other properties.

The property to the east has two existing curb cuts, and the proposed new entrance for the drive-through would use the one closer to the existing plaza. The adjacent property is also owned by the owner of the plaza, but consideration should be given to the possible scenario in which the parcel to the east changes ownership.

Though the curb cut is existing, the driveway it serves has not received significant use since the construction of the plaza. The applicant points out that directing the drive-through traffic into this entrance would alleviate the (occasionally dangerous) interference of drive-through stacking with traffic entering the plaza from Tunnel Road. Further, relocation of the ATM would allow for fewer conflicts with other parking lot traffic flow (Site Plan – Attachment to City Exhibit 3).

City staff's chief uncertainty about the proposed redesign was related to potential conflict with the driveway across the street and the number of entrances serving the same development in such proximity. However, given that US-70 is a highway, assessment of such conditions is the purview of N.C. Dept. of Transportation (DOT). On October 6, the applicant informed staff that DOT had approved the driveway permit.

The area proposed for modification which would need to be added to the conditional use overlay is only a portion of a parcel. In order to prevent the overlay from bisecting a parcel, the applicant has agreed to relocate the property boundary to include the affected area.

This project was approved with conditions by the Technical Review Committee on October 2, 2011. As an amendment to a previously approved Conditional Use Permit, review by the Planning & Zoning Commission is not required.

As of this writing, staff has not received any communication from citizens regarding this matter.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   *The project will meet State building code requirements and will be reviewed in detail by the Technical Review Committee (as well as NCDOT staff) to ensure compliance with safety requirements.*

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   *The proposed site modifications will involve minimal earth work and disturbance. For what grading is undertaken, measures will be required to prevent adverse impact to nearby water quality.*

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   *There is only one property adjoining the affected area which is not owned by the applicant. Staff feels this proposed change will have no discernible effect on that property, nor any other nearby property.*

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   *The amendment essentially involves the reconfiguration of a vehicular use area, whose characteristics staff feels will have negligible consequences for the character of the neighborhood.*

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   *Other than possibly promoting safety by lessening conflicts related to traffic interaction, staff feels the proposal would neither hinder nor promote the goals of such plans, policies, and strategies.*

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   *The proposed changes are not anticipated to generate additional traffic, demand water, or increase any need for other services, and as such, the location is equally suitable as the current situation.*

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   *Staff from both the City's Transportation department and the North Carolina Department of Transportation have reviewed the proposed alterations for safety and traffic flow implications and deemed them appropriate for approval.*

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pro:

- May improve safety of traffic movement.

Con:

- None noted.

Staff recommends approval of this amendment to the previously approved Conditional Use Permit.

Mr. Marty Kocot, Civil Engineer on the project, urged Council to approve the amendment to the conditional use permit for safety reasons.

After rebuttal, Mayor Bellamy closed the public hearing at 6:09 p.m.

Councilman Russell moved for the adoption of Ordinance No. 4029, granting an amendment to the conditional use permit for Four Seasons Plaza, located at 1011 Tunnel Road, by adding the area denoted on the site plan to the conditional overlay for the Four Seasons Plaza, subject to the conditions recommended by City staff and subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All new site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets. If lighting is to be added, a detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 27 - PAGE 207**

**V. UNFINISHED BUSINESS:**

**A. SECOND & FINAL READING OF ORDINANCE NO. 4025 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 3 EAST WANETA STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/ CONDITIONAL ZONING TO ALLOW FOR CONVERSION OF THE DUPLEX TO A SINGLE FAMILY HOME; THE CREATION OF A SECOND PARCEL FOR FUTURE DEVELOPMENT OF A SINGLE-FAMILY DWELLING; AND A REQUEST FOR MODIFICATIONS TO STANDARDS FOR SETBACKS AND LOT SIZE**

Mayor Bellamy said that the public hearing and adoption on first reading of this ordinance was held on October 11, 2011, but because the ordinance was not adopted by a 2/3 vote of Council, it was necessary to bring the ordinance back for a second and final reading.

Ms. Patsy Brison, attorney representing the applicants, provided Council with a letter dated October 25, 2011, along with a copy of a Certificate of Appropriateness issued by the Historic Resources Commission of Asheville and Buncombe County on February 26, 2008, for new construction of a 2,324 sq. ft., two-story single-family dwelling with basement. The Permit Extension Act of 2009, as amended, has the effect of extending the time period for this approval beyond the expiration date, meaning that it is still in effect.

City Attorney Oast explained that the Certificate of Appropriateness describes how the property can be developed – two-story single-family dwelling with basement. In order for anything else to be built would require an amendment to the Certificate of Appropriateness.

Councilman Russell moved for the second and final reading of Ordinance No. 4025. This motion was seconded by Councilman Smith and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilwoman Manheimer voting "no."

ORDINANCE BOOK NO. 27 – PAGE 197

**B. REPORT ON REQUEST FOR TEMPORARY WAIVERS TO THE BANNER POLICY AND SIGNAGE POLICY FOR MOOGFEST**

Assistant Director of Planning & Development Shannon Tuch said that at the October 11, 2011 City Council meeting the Council directed city staff to work with ACS entertainment on identification needs for the upcoming Moogfest music festival. Specifically, temporary signage and light pole banners were discussed.

City staff has met with the event organizer and have cooperatively detailed and mapped all of the proposed temporary signage – all square footage limitations and off-premise restrictions have been waived. Only those standards related to public safety have been upheld with very limited effect on the event. Light pole banners were also discussed and offered; however, the event organizers ultimately decided not to pursue these at this time.

As part of a wording amendment currently in process, new signage allowances for large temporary events is being considered. It is anticipated that these allowances will be in place prior to the Southern Conference Basketball Tournament and other large events expected in the spring.

Councilman Smith moved to waive the proposed temporary signage. This motion was seconded by Councilman Davis and carried unanimously.

At 6:15 p.m., Mayor Bellamy announced a 5-minute recess.

**C. REPORT ON A PERMANENT OVERNIGHT CAMPING LOCATION FOR OCCUPY ASHEVILLE**

Assistant City Manager Jeff Richardson said that at the direction of City Council in the October 11 formal meeting, staff reviewed City-owned public spaces in an effort to provide potential public space options for Occupy Asheville to be permitted to occupy on a continuous 24 hour basis for an indefinite period of time. On Thursday, October 13, city staff met with representatives from Occupy Asheville and covered in detail three public space options that City staff had analyzed and were prepared to work with the group on the normal permitting process. Those parcels were:

- Bottom of Lexington Avenue under the I-240 Overpass (specifically the public metered parking area) in that area. This area can be offered on a **24-7 basis** and there are no permitted events there for the remainder of the calendar year.
- City employee lot adjacent to Marjorie Street and the corner of Valley Street. (Gated currently). This lot can be permitted for the group's use from **7pm - 7am daily.**
- City street level public parking lot on Rankin Street (two options), across and beside the Rankin Avenue Parking garage. **7pm to 7am daily**.

These locations would serve as a staging area for and would be ancillary to the group's primary activity of conducting a protest in the City's downtown parks during daytime hours. City staff answered questions regarding each of these options, and explained the required permitting process for any of these locations, at their request.

The group indicated that their primary interest is to occupy a public park in downtown on a continuous 24-hour basis, within eye sight and sound proximity to government buildings and banks. Staff explained that they do not have administrative authority to allow occupying of the parks past 10:00 p.m. daily, and such consideration would require City Council approval.

The group requested one additional day to consider each of the options as presented and a follow up meeting with City staff on Friday, October 14 for further discussion. On Friday, October 14, City staff met again with representatives from Occupy Asheville. That meeting resulted in the following:

1. Occupy Asheville completed a permit application for the fifteen (15) publically metered parking spaces at the bottom of Lexington Avenue under the I-240 overpass. Note: This property is under the control of the City of Asheville through an Encroachment Agreement with the N.C. Department of Transportation.
2. The event organizer stated their intent to attend the October 25 City Council meeting and request waivers for all fees associated with the permitting of the space.
3. On Tuesday, October 18, City staff was contacted by Occupy Asheville and a new permit application was submitted with an expanded list of requested uses for the public space and an extended timeframe of twelve months. Staff continues the review the new application permit at the time of submittal of this memorandum.

Fiscal Impact:

- City policy outlines a $15 per meter per day charge to the event organizer for the permitted use of the parking spaces in the requested area. These charges total $225 per day. Parking Services Division has provided periodic analysis of public usage of metered areas in the CBD and reports that average daily revenue generated from these spaces average $16.09 per day, representing an overall low public usage.
- Inspection Fees: $260
- Liability Insurance: TBD
- The city does not have the resources to fulfill the barricade order for the defined period of time as it would negatively impact the city's ability to meet day-to-day operational needs.

Concerns noted:

- Department of Transportation: The City of Asheville has permitted temporary use special events on occasion, however, none for the expressed use as outlined herein, and none for the potential duration of time as indicated by the event organizer. As result, the local office of the Department of Transportation has contacted the City and expressed concern that the permitted use of this public space does not keep in the spirit and intent of the agreement as outlined. Further, DOT staff indicated that if the City permits this space for long term use in this manner, DOT will review this issue with DOT in Raleigh and ask for guidance accordingly.

- Insurance Liability Requirement: As standard practice, the event organizer is responsible for providing certificate of insurance prior to release of the permit. The City's Risk Manager has reviewed the permit and requested use and does not recommend waiver due to the city's liability associated with this waiver.

- Constitutional Law: There are significant First Amendment considerations (i.e. consideration of future permit applications for all other groups to continuously occupy City property if they meet the permit requirements).

- District Attorney's Office: The District Attorney has concerns of successfully prosecuting defendants for violations of law on City property if exceptions are allowed for a particular group.

- Public Safety: The Asheville Police and Fire Department has indicated public safety/traffic concerns and continues to monitor accordingly. As event participation levels

grow, staffing redeployment considerations may need to be made. To date, Police has charged one person with assault at the event site.

- Environmental Health: City ordinance requires portable restrooms and the event organizer has complied with this requirement. There are no other health related requirements specific to this permit application.

Review of North Carolina cities:

- City of Charlotte: Occupy event organizers are allowed to have "pop up" tents in a green space in front of City Hall designated Public Forum space. The space is not a city park, but is owned by the City and can be utilized by any group. The city does not program the space and there are not any time constraints accordingly.
- City of Greensboro: Occupy demonstrators are leasing a YWCA lot for overnight camping, nine blocks from downtown plaza. The YWCA lease runs out in two weeks and the city has placed the burden on finding additional space on the event organizers.
- City of Durham: Occupy event organizers have been congregating at CCB Plaza during the day-time hours, but because it is considered a part of the Durham Parks System, overnight camping is prohibited. No permits have been issued.
- City of Raleigh: 19 Occupy event participants were arrested on October 15 after refusing to leave the NC Capital grounds, after their permit expired at 3:00 p.m. on that day. Event organizers are not allowed to pitch tents as Raleigh does not allow camping in public parks, except for Olmsted Park, where there is a $14 fee. In addition, event participants are allowed to set up lawn chairs as long as they do not impede the use of the sidewalk.

At this time, City staff is withholding the final permit action in an attempt to determine viable options regarding the event organizer's required insurance certificate. City staff will continue to review this event in concert with its current staging location, and will be prepared to report on any additional issues that may arise up until the October 25 meeting.

Mayor Bellamy said that normally Council would have a motion on the floor before public comment. There has been a request to hear from the community before a motion is made. Councilman Bothwell then moved to hear from the community before a motion is made. This motion is seconded by Councilman Smith and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Russell voting "no." Councilman Russell wondered what the public would be commenting on. Mayor Bellamy agreed with Councilman Russell; however, the motion passed. She said that public comment is limited to one hour and explained the time limits for speakers.

In terms of process, Vice-Mayor Newman moved to allow 30 minutes for public comment now with the understanding that if a specific motion is made by Council, then an additional 30 minutes for public comment be allowed on that specific motion. This motion was seconded by Councilman Bothwell and carried on a 6-1 vote, with Mayor Bellamy voting "no." Mayor Bellamy could not support the motion as the rules are continually changing and we are setting a bad precedence.

The following individuals expressed concern over Council setting precedence in allowing special privileges and fee waivers for one group:

Mr. Rod Hudgins, representing the Council of Independent Business Owners
Mr. Chris Peterson
Ms. Heather Dillashaw, with Homeward Bound, but representing herself (requested consistency because it's problematic for one particular group to be given special consideration for an approved and permitted camp site when any given night we have over 500 homeless that do not have places to sleep, noting that many are

arrested for camping in public places)

The following individuals urged Council to waive the 10:00 p.m. park curfew that would permit Occupy Asheville (an assembly of people) a permanent place to camp to assemble 24 hours indefinitely within Pack Square Park/Roger McGuire, claiming that this falls under the rights of free speech and public assembly:

Dr. Milton Byrd
Ms. Rosetta Star, owner of Rosetta's Kitchen on Lexington Avenue (also noted that their current location under the Lexington Avenue bridge is toxic due to issues with air quality, and already occupied by a huge amount of the mentally ill, sick and homeless population)
Mr. Scott Owen
Chaplain Robert Zachary
Rev. Christopher Chiaronmonte

Councilman Smith praised the social movement and how everyone has handled the situation to date. He said that Occupy Asheville is referred to as a leaderless organization, making it difficult to negotiate with local government, especially when different parts of Occupy Asheville want different things. He outlined the following issues facing Council when considering their role regarding Occupy Asheville: (1) what is the precedent we are setting; (2) public safety for Occupy Asheville and everyone else; (3) responding appropriately to non-violent actions; (4) recognition that there are a variety of political views in the City; and (5) respect for free speech and civil liberties. Based on his conversations with Occupy Asheville, he did not believe the presence or absence of an enduring permitted partnership with the City will either make or break this movement. He knows that people who want to camp, do it currently and legally as evidenced by the Federal Building campers. The temporary solution under the I-240 overpass on Lexington Avenue was designed to give the City a chance to consider all these issues, noting this is not the end. Our ongoing patience and understanding and dialogue will help all of us move the City forward.

Councilman Smith then moved that the temporary accommodations cease on Friday, October 28, 2011, at 6:00 p.m.; that the Asheville Police Department fully train all responding officers in non-violent responses to non-violent direct action and are very clear regarding protecting free speech and civil liberties; and that Council waive fees incurred in the course of this Council-initiated response to an extraordinary circumstance.

Because Councilman Smith's motion is complicated dealing with procedures, operations and finances, Mayor Bellamy requested each part of the one motion be divided and voted on separately.

Councilman Smith then moved that temporary accommodations cease on Friday, October 28, 2011, at 6:00 p.m. This motion was seconded by Vice-Mayor Newman.

Due to previous discussion about the amount of public comment allotted for each specific motion, Vice-Mayor Newman confirmed with City Attorney Oast that it is a Council member's option to include multiple parts into one motion if they choose.

Councilman Russell, Chair of the Public Safety Committee, felt that the second part of Councilman Smith's motion regarding the Asheville Police Department can be handled without Council direction. City Manager Jackson agreed in that that we have experienced the training identified in the motion and felt that the intent of the motion was to use it to it's fullest extent in the event of the closure of the temporary accommodations.

Councilman Smith also noted that the movement will likely continue and will have a series of non-violent direct actions quite possibly, and that the Asheville Police Department

should respond appropriately to each of those and ideally work closely with the organizers to ensure that everything remains non-violent. City Manager Jackson said that is our intent and approach and with the City Attorney's Office and the Police Department there has been extensive training. We will continue to be current to track movement and track the best techniques in responding and working with Occupy Asheville cooperatively.

From City Manager Jackson's response, Councilman Smith understood that it's not necessary to make a motion to that point in that the policy and procedures are already in place. City Manager Jackson said that Council is asking them to operate with the best training techniques and communication skills we have available.

Councilman Smith agreed to have his motion divided and voted on separately if 15 minutes of public comment is allowed on each of the two motions.

Mayor Bellamy reiterated Councilman Smith's motions as follows: (1) that the temporary accommodations cease on Friday, October 28, 2011, at 6:00 p.m.; and (2) that Council waive fees incurred in the course of this Council-initiated response to an extraordinary circumstance. Mayor Bellamy said that there will be a total of 30 minutes public comment on both motions and the motions will be considered concurrently so people can speak to both issues when they address Council.

The following individuals spoke to Council on both issues, with various comments being made, such as, but not limited to: ceasing the temporary accommodation is not applicable since they only have an application for a permit; request to waive the $224 for the public spaces parking; waive the 10:00 p.m. park curfew so Occupy Asheville can camp to assemble 24 hours indefinitely within Pack Square Park/Roger McGuire; Occupy Asheville has been a benefit to the City and not a burden as they have helped feed people and are keeping people safe at night; Occupy Asheville has done random acts of kindness; Occupy Asheville does not want hand-outs but to educate the public;

Mr. Matthew Burd
Ms. Leslie Boyd
Ms. Lindsey McGillis
Rev. Lisa Landis
Mr. Scott Owen
Mr. Chad Ekre
Mr. Michael Pinnager
Mr. Victor Ochoa
Mr. Anthony Benton
Mr. Luca Resani
Ms. Judith Hoy
Ms. Catherine Davis Zommer

Mr. Mike Fryar spoke against waiving the fees incurred by Occupy Asheville.

Mayor Bellamy reiterated Councilman Smith's motion which was seconded by Vice-Mayor Newman that the temporary accommodations cease on Friday, October 28, 2011, at 6:00 p.m.

Councilman Bothwell agreed that credit was due for all parties. He was hoping to hear some ideas about locations in the public comment period before Council discussion. Most public comment was about the spirit of Occupy Asheville more than specific plans. He understood that their goal is a park. He supported the Occupy movement. He was pleased that the AFL CIO followed through on his suggestion to provide port-a-johns. He is working with the ACLU to create a legal defense team. He is also talking with a Physician's Assistant and a doctor to provide a free health care clinic two days a week for Occupy Asheville. Regardless of what

Council does, Occupy Asheville will go on and he wants this to move forward. Maybe the motion to cease the temporary accommodation is necessary to force the next step. He didn't know if the City will be able to come up with a place, but he felt it is important that Asheville supports this movement.

The motion made by Councilman Smith and seconded by Vice-Mayor Newman carried on a 6-1 vote, with Councilman Bothwell voting "no."

Councilman Smith then moved that Council waive fees incurred in the course of this Council-initiated response to an extraordinary circumstance. This motion was seconded by Councilman Bothwell.

Councilwoman Manheimer asked for a clarification on the parking meter fees. Mr. Richardson said the approximate amount of waiver would be $150 for the entire time Occupy Asheville has occupied the lot.

Vice-Mayor Newman outlined the many has many shared goals that City Council has with Occupy Asheville, e.g., Council is a diverse group and have different views, they have adopted a living wage policy for City employees and those who do business with the City, we have adopted a policy and provided resources to end homelessness in Asheville, we are reducing our own carbon footprint, and we believe in equal rights for everyone in Asheville.. But, he said we have a long way to go on many issues. Although we may disagree on the specific issue brought before Council does not mean we disagree with the changes you want brought to the community and this country.

Councilman Bothwell felt that waiving the parking meter fees is the minimum we can do. He noted that we block off parking meters for different reasons all the time. He did not recall the 51 Biltmore Avenue project or the Pack Square Conservancy project paying for the meters that they closed during their construction phases.

Mayor Bellamy cannot support the motion and asked Occupy Asheville to really look at our community. Asheville is a very inclusive community and we make sure people are involved in our decision-making processes. We have over 30 boards & commissions that volunteer members make up all facets of life and the decisions that govern our community are not just made by City Council. Our Planning & Zoning Commission, Recreation Board, Historic Resources Commission, Greenway Commission, Public Art & Cultural Commission (to just name a few) are made up of residents who advise City Council. We made a commitment to dialogue with our residents. When we think about parking taken off line, it's normal that someone pays a permit fee or it's a group that is bring economic development into our community. While the amount requested to be waived for parking is low, that does not take into other costs incurred by the City by the movement's presence, e.g., Police Department's time (which could be devoted to other areas of the City). She didn't think it was fair for Occupy Asheville to make the working class and low-income residents, they purport to help through their movement, to pay for these services. There is a financial impact of this movement on people who are not part of this movement. She could not support waiving the fees because she believed this is a cost incurred by collectively a group and they should pay the fees.

The motion made by Councilman Smith and seconded by Councilman Bothwell carried on a 4-2 vote, with Mayor Bellamy, Councilman Davis and Councilman Russell voting "no."

Councilman Bothwell moved to find a park and remove the curfew to allow permanent camping. This motion died for a lack of a second.

**D. RESOLUTION NO. 11-222- RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER WITH MOORE & SONS SITE**

460.



**CONTRACTORS INC. TO COVER THE COST OF REVISIONS TO THE CLINGMAN AVENUE/HAYWOOD ROAD STREETSCAPE PROJECT**

Engineering Services Manager Greg Shuler said that this is the consideration of a resolution authorizing the City Manager to execute a change order with Moore & Sons Site Contractors Inc., in the amount of $175,000, to cover the cost of revisions to the Clingman Avenue/Haywood Road Streetscape Project.

City Council authorized the City Manager to enter into a contract with Moore and Sons Site Contractors Inc., a local company, for the Clingman Avenue/Haywood Road Streetscape Project for a total of $503,827, not to exceed the project budget. On December 14, 2010, a change order was executed for the amount of $100,000 to increase the contract to cover unforeseen construction costs. This exhausted the 20% maximum that City Council had authorized the City Manager to execute. Subsequent thereto, members of the community voiced a desire to add a bike lane on the climbing side of Clingman to connect to Hilliard Avenue. To accommodate the community's request, the project had to be re-designed, significantly increasing the project cost due to among other things, the relocation of numerous utility poles. City Council then approved the transfer of funds from the completed Patton Avenue Sidewalk project and the completed Kimberly Avenue Resurfacing project to cover the cost of the re-design and subsequent additional construction. Staff is now seeking Council approval of a change order to the contract with Moore and Sons Site Contractors Inc. in the amount of $175,000 to pay for these additional construction costs per City contracting procedures.

This action complies with the City Council Strategic Operating Plan in fully leveraging funding from the State and other sources for regional transportation improvements. This action also complies with the City of Asheville Comprehensive Bicycle Plan in that it provides a climbing lane on a street identified in the plan as a need.

Pros:

- Implements a project in the City's adopted bicycle plan.
- Improves bicyclist safety.
- Encourages biking, thereby reducing carbon emissions.

Con:

- The City's contribution to the project had to be increased to cover the additional design and construction costs.

Funding already exists within the Clingman Streetscape project to accommodate this $175,000 change order. The original budget for this project was $907,251. In May of this year, Council approved a $250,000 budget amendment in this project to fund the additional design and construction costs mentioned above, which brought the total project budget to $1,157,251. Of this amount, $750,000 is City General Fund money, with the remaining $407,251 being provided by grant funding from the N.C. Dept. of Transportation.

City staff recommends City Council adopt the change order to appropriate fund accounts.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 11-222. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Mayor Bellamy voting "no."

**RESOLUTION BOOK NO. 34 - PAGE**

**VI. NEW BUSINESS:**

## A. METROPOLITAN SEWERAGE DISTRICT

Mr. Steven T. Aceto, Chairman of the Metropolitan Sewerage District of Buncombe County (MSD), is requesting the City of Asheville join with him in the following letter to Mr. Tim Moore, Chairman of the Legislative Research Commission regarding the Legislative Research Commission Water & Sewer Consolidation Study. "We are writing to you in your capacity as the Chair of the Legislative Research Commission. We understand that you have been authorized to appoint subcommittees to study certain matters, including *Metropolitan Sewerage / Water System (HB 925 Moffit),* and that Representatives Moffit, McGrady, Brawley, Murry and Brisson have been appointed to the subcommittee researching this issue with Representative Moffit serving as chair. As the ratepayers and users of the Metropolitan Sewerage District of Buncombe County and the ratepayers and users of the City of Asheville water system could be affected substantially by the work of this subcommittee and staff, we request the opportunity to provide input to the subcommittee and staff as they go about their work. Your cooperation and assistance in this matter are most appreciated." The MSD Board approved this letter.

Regarding the Task Force (which the MSD Board approved), Mr. Aceto said the role of the Task Force is to address the specific items mentioned by Mr. Moffitt and, the three models of providing service. The MSD Planning Committee recommended to the full MSD Board and the City Council that a Task Force be created to assemble the information delineated in HB 925 along with other pertinent information in order to provide input to the Legislative Research Committee (LRC) Study Subcommittee. The Task Force shall report all findings to the MSD Board and City Council. In addition, the Task Force shall consider the three models of providing service: (1) No change in service providers; (2) City of Asheville Water system merge with MSD, and (3) Separate independent Authority like MSD. This local Task Force shall be comprised of two members from the MSD Board and two members of City Council, with Gary McGill as consultant and facilitator. The MSD Committee voted to have Al Root and Bob Watts represent the MSD Board on the local Task Force.

Vice-Mayor Newman said that the Boards & Commissions Committee discussed this and recommended appointing Councilwoman Manheimer as one of our representatives to the Task Force. He also said that if no one else on Council would like to serve, he would be willing. He has served on the MSD Board in the past, but noted that his term on City Council ends on December 6; however, he would be willing to continue on the Task Force if that is the wish of Council.

Councilman Bothwell moved to appoint Councilwoman Manheimer and Vice-Mayor Newman as our two representatives to the Task Force.

Regarding Councilman Davis' question on the Task Force's role when they attend the meetings in Raleigh, Mr. Aceto understood the LGC will appoint five members of the Study Committee; Representative Moffit as Chair, Chuck McGrady from Henderson County, Bill Brawley from Mecklenburg County, Tom Murry from Wake County and William Brisson from Bladen County. Mr. Moffit reported that the LRC Committee is limited to four meetings between now and the end of April of next year. As Chairman of the Committee, Mr. Moffit is trying to get a lot of what needs to be done ahead of the first meeting and felt the best way to effectively have a very local transparent involvement of interested parties in the entire process would be an informal committee; probably advisory. Mr. Aceto said the function of the Task Force would not necessarily to participate in the meetings, but provide a coordinated way to provide factual input and study into this process, whatever form it takes.

Mayor Bellamy was not opposed to Vice-Mayor Newman serving, but only until his term on Council ends. She felt the intent of the MSD Planning Committee was to have two members of City Council on the Task Force.

Vice-Mayor Newman understood Mayor Bellamy's statement and withdrew his name because he would not be a member of Council through the process.

Councilman Smith suggested Councilman Davis as the other City representative because of his history and depth of the matter. He would be willing to serve; however; he may not be the City's best representative.

Mayor Bellamy was not interested in serving on the Task Force as she admitted she was very biased about what should happen to our water system. She did feel it was necessary to have a seated City Council member who can start and finish the process.

Councilman Davis appreciated the confidence of Councilman Smith, noting he did have a good institutional history of the matter, but he also acknowledged that he is biased in his opinion. He felt Asheville is being treated uniquely in this instance. The City has worked a long time on making a good water system and they have been good stewards. He would be advocating for the City to keep its assets. That said, he is running for re-election in November and if not re-elected, he would not be eligible to serve on the Task Force.

In response to Councilman Smith, Councilwoman Manheimer said that the legislature had decided that certain studies would basically be formed as subcommittees of the LRC and in the case of the House, the LRC creates these subcommittees and appoints the members. The point is it is very discretionary and all we know is that the Chair has been designated to be Representative Moffit and there are four other members of the House. Because it is a subcommittee of the LRC, no one else can be on the subcommittee other than a House member. We also know that they are charged with studying the items that were included in the original proposed study bill. We have been told by Mr. Moffit that the Speaker of the House has directed that the LRC subcommittees can meet only four times during the interim (the time period where the legislature is not in session). They go back into session in May for their Short Session. All we know is that at the pleasure of Mr. Moffit, they shall meet four times in Raleigh at a time designated by the Chair.

Councilwoman Manheimer said the Task Force will not make a recommendation but provide information back to Council and MSD. They are only more of a vehicle of compiling the information. Rather than sit by and have no participation on the part of local government in Asheville, the MSD Planning Board decided to come together and gather data to provide to the Study Committee. The purpose of the Task Force is not to make a recommendation one way or another.

Councilman Smith said that he would be willing to serve, with the understanding that he could not guarantee that he could attend the meetings in Raleigh.

In response to Councilman Bothwell, Councilwoman Manheimer said that the meeting schedule may not be known until one week ahead of the meeting.

Councilman Davis said that if it is acceptable to Council, if he is re-elected, he would be willing to serve.

Councilman Bothwell withdrew his motion.

Rev. Christopher Chiaronmonte predicted the City would lose the water system.

Dr. Milton Byrd recognized that the wheels of government move slowly and the bureaucracy around the water and sewer issue has been a quagmire for years. He said there is no balance and at some point Council needs to look forward to see what is the best way to let go and move forward.

Councilman Russell moved to (1) authorize the Mayor to sign the joint letter with MSD regarding the Water & Sewer Consolidation Study; and (2) appoint Councilwoman Manheimer and Councilman Davis, with Councilman Smith as a back-up should Councilman Davis not be re-elected, as our two representatives to the Task Force. This motion was seconded by Vice-Mayor Newman and carried unanimously.

**B. CONSIDERATION OF A CHARITABLE CONTRIBUTION COMBINED CAMPAIGN FOR CITY OF ASHEVILLE EMPLOYEES**

Director of Finance and Management Services Lauren Bradley provided Council with the following background information for a proposal to implement a charitable contribution combined campaign for City of Asheville employees.

The City of Asheville participates in an annual campaign where City employees can make charitable contributions through voluntary payroll deductions or one-time gifts. The United Way is currently the only organization authorized to participate in the City's campaign and to solicit charitable contributions in our workplace.

At the September 13, 2011, Finance Committee meeting, a representative from EarthShare North Carolina (ESNC) requested that the City consider expanding its campaign to be a "combined campaign," or one that includes additional federations, which are "umbrella" organizations that have multiple independent, charitable agencies who all work on a specific area of focus as members.

The Finance Committee directed staff to gather further background information about a combined campaign with a focus on its impact on staff workload and potential costs. The Committee asked for that information to be shared City Council. The following document provides additional information about the proposed combined campaign.

This report is being provided for informational purposes only and there is no associated staff recommendation. Information on the combined campaign is below:

**How does a combined campaign work?** Based on best practices in North Carolina, the local government first develops a standard procedure for the combined campaign that defines criteria for accepting charitable organizations. The criteria used by other local governments typically requires an eligible organization to be a federation, which is a group of a minimum number of non-profit charitable organizations that have voluntarily joined together for purposes of raising and distributing money for and among themselves. Once the criteria and application process is adopted, the city would accept applications from organizations for inclusion in the campaign.

In most cases, the local government selects a participating federation to administer the campaign. The campaign administrator serves as the liaison between the city and the participating federations, prepares a combined pledge card, and coordinates with representatives from all of the included federations to participate in employee campaign meetings and activities. The city considers management proposals and selects the administrator. The city can also establish the maximum fee for administering the campaign. The fee is typically a percentage of pledges in the campaign but could be a set cost as well.

Representatives from EarthShare NC have suggested that the United Way of Asheville and Buncombe County has experience administering the combined federal campaign covering Western North Carolina and would be familiar with what is involved to administrate a combined campaign for Asheville, and may be a natural choice since it has an established local presence. EarthShare NC also serves as the administrator for the Raleigh and Cary campaigns, and has suggested that it could provide that support if needed.

The city decides to what extent staff is used to communicate the campaign. In most cases, the city utilizes staff to serve as campaign coordinators, as Asheville does now for the United Way campaign, to distribute and collect pledge cards and serve as the ambassadors for the campaign. The campaign administrator compiles all of the pledge cards to provide the city with a payroll deduction file, receives the payroll deduction check from the city, and distributes the pledges and receipts from the campaign to the participating federations for distribution to their members.

**Would a combined campaign result in additional staff workload?** From a payroll administration perspective, the process is identical to Asheville's current procedures with the United Way campaign and would not necessarily result in additional staff workload. Asheville would deduct contributions from paychecks and send a single payment to the campaign administrator. The campaign administrator is then responsible for distributing the funds to the designated federations.

**What federations typically participate in combined campaigns in North Carolina?** Examples of federations in North Carolina include EarthShare North Carolina, which is a federation of 66 member non-profits that share a mission of preserving and enhancing the natural environment. Community Health Charities is an umbrella organization for health-related charities. North Carolina Community Shares is a federation of organizations that focus on social justice. There are a number of other federations in North Carolina.

**What other local governments have a combined campaign?** The Towns of Carrboro, Chapel Hill, Cary and Hillsborough; the Cities of Durham, Raleigh and Greensboro; and the counties of Guilford, Mecklenburg, Orange and Wake currently offer a combined campaign. The State of North Carolina also offers a State Employees Combined Campaign.

**What would be the timeline for launching a combined campaign?** If the combined campaign proposal is approved by City Council, staff would develop a standard operating procedure, including criteria for charitable organizations and an application process, for City Council consideration in winter 2012. Designating the campaign coordinator and implementing the application process would take place in spring/summer 2012. The combined campaign would be launched in late 2012 for payroll deductions in calendar year 2013.

Vice-Mayor Newman said that he and Councilman Bothwell and Councilwoman Manheimer met informally with representatives from the United Way and EarthShare to discuss some of the concerns for providing a public health environmental component to the workplace giving at the City. It was the consensus amongst the Council that it would be beneficial to provide some additional time for staff, United Way and EarthShare to continue this discussion and see if there is an approach which both groups could be supportive of going forward. He recommended that Council continue this matter until November 22.

Mayor Bellamy was under the impression that the groups wanted 60 days to allow them ample time for all issues to be addressed.

When Councilman Bothwell asked if there was a consensus of Council for this to move forward so as to avoid unnecessary City, United Way and EarthShare staff time if this idea is not something Council would be interested in, Councilman Russell said that the Finance Committee, made up of three members of Council, were supportive.

Councilman Russell moved to continue this matter until December 13, 2011. This motion was seconded by Councilman Bothwell and carried unanimously.

**B. PACK PLACE BOARD OF TRUSTEES**

Vice-Mayor Newman said that the Boards & Commissions Committee discussed appointing Councilwoman Manheimer to replace Councilman Russell on the Pack Place Board of Trustees. Councilwoman Manheimer is interested in serving; however, wanted additional time to do some research on whether there would be a conflict of interest since her law firm has done some work with the Art Museum. He asked that this matter be continued until November 22.

Mayor Bellamy said that all boards that have Council assignments will be discussed when the new Council takes office in December. She felt that would be the appropriate time to make the replacement.

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Rev. Christopher Chiaronmonte felt the City has chased of f the homeless by harassment.

Mr. H.L. Carlyle spoke about the need for integrity and felt that Ms. Samatha Bowers, an employee of the Housing Authority, has integrity.

Dr. Milton Byrd said that Council has to stand their ground as representatives of due process and democracy. And, at the same time, they must have the willingness to stand up as leaders and say what needs to be said as leaders.

Mayor Bellamy reminded the public that City Council has cancelled their November 8, 2011, meeting and encouraged the public to vote. In addition, she said that the City of Asheville will not be holding an independent Veterans Day event, but encouraged the public to participate with the VA Hospital's event.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 8:59 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

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Tuesday – November 22, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Deputy City Clerk Philip Kleisler

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Davis gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION**

Mayor Bellamy was pleased to recognize Robert W. Oast Jr., who has been Asheville's City Attorney for 15 years. On behalf of City Council, she thanked him for his service.

**II. CONSENT AGENDA:**

At the request of Councilman Smith, Consent Agenda Item "C" was removed from the Consent Agenda for discussion and/or an individual vote.

At the request of Mayor Bellamy, Consent Agenda Item "H" was removed from the Consent Agenda for discussion and/or an individual vote.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 25, 2011**

**B. RESOLUTION NO. 11-223 - RESOLUTION SETTING A PUBLIC HEARING ON JANUARY 10, 2012, TO CONSIDER THE PERMANENTLY CLOSING OF A PORTION OF COLLEGE STREET**

Summary: The consideration of a resolution of intent to permanently close a portion of College Street, and setting a public hearing on January 10, 2012.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjacent property owner Buncombe County has requested the City of Asheville to permanently close a portion of College Street, being a portion of College Street running with the Buncombe County property line on the Southern sidewalk of College Street beginning in the front of the existing Buncombe County Courthouse and toward the old Biltmore Press Building.

The proposed permanent closure of a portion of College Street has been placed on the Greenway Commission's agenda at their regular meeting on December 8, 2011.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties
- Buncombe County will be installing the sidewalk within the remaining College Street right of way.

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of intent to close a portion of College Street, and setting a public hearing on January 10, 2012.

**RESOLUTION BOOK NO. 34 – PAGE 195**

**C. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH COPELAND HOLDINGS, LLC FOR SECURITY SERVICES IN THE CITY'S PARKING GARAGES**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**D. RESOLUTION NO. 11-224 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A NON-MATCHING GRANT FROM THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR THE PROCUREMENT OF EQUIPMENT FUNDS TO BE USED BY HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM 6 – ASHEVILLE**

**ORDINANCE NO. 4030 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR THE PROCUREMENT OF EQUIPMENT FUNDS TO BE USED BY HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM 6 – ASHEVILLE**

Summary: The consideration of (1) a resolution authorizing the City Manager to accept a non-matching grant from the N.C. Dept. of Crime Control and Public Safety, Division of Emergency Management, for the procurement of equipment and training funds to be used by Hazardous materials Regional Response Team 6 – Asheville; and (2) the associated budget amendment, in the amount of $25,000.

The U.S. Department of Homeland Security and the Office of Domestic Preparedness has made funds available through State Homeland Security Grant Number: FY2011-SS-00119-S01 to implement the State Homeland Security Strategy. The strategy identifies the NC Hazardous Materials Regional Response Teams (RRT) as an integral component of North Carolina's preparation and response to manmade and natural emergencies and disasters. The purpose of the grant is to purchase specialized equipment to be used on-scene and to prepare for threatened or actual weapons of mass destruction or domestic terrorists' attacks or major disasters and to train for such events.

There are seven Regional Response Teams (RRT) strategically located throughout the state. Asheville Fire and Rescue hosts one of the seven state funded teams - RRT 6. The team responds to hazardous materials incidents in the twenty westernmost counties of North Carolina.

Each of the seven RRTs will receive an equal amount of non-matching funding and each will procure comparable equipment. The equipment consists of updated existing equipment and for training. The grant is non-matching and all equipment provided through this grant will become the property of the Asheville City Government. This action also complies with the Strategic Operating Plan by better equipping the Hazardous Materials Team with upgraded equipment; this grant will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

The City Council Public Safety Committee reviewed this item on their November 15, 2011, agenda and recommended approval.

Pros:

- The Department of Crime Control and Public Safety, Division of Emergency Management, will provide $25,000 in non-matching funds for the purpose of upgrading Asheville and Western North Carolina's terrorism response capabilities.
- The equipment is state of the art and will better address the risk of terrorist's attacks and hazardous materials incidents.
- All statewide regional response teams will be comparably equipped and interoperability will be realized should an event require the resources of additional teams.
- This equipment is immediately available to Asheville residents and businesses. This level of equipment would most likely not be able to be obtained through the city's general budget process.
- Firefighter and citizen safety will be enhanced.

Con:

- The City of Asheville will be responsible for maintenance and upkeep of the equipment.

There is no fiscal impact associated with this grant, as it is non-matching.

City staff recommends that City Council (1) authorize the City Manager to accept the non-matching grant from the NC Department of Crime Control and Public Safety, Division of Emergency Management, to enhance AFD's capabilities to protect Asheville and Western North Carolina; and (2) adopt the associated budget amendment.

**RESOLUTION BOOK NO. 34 – PAGE 196**
**ORDINANCE BOOK NO. 27 – PAGE 214**

**E. RESOLUTION NO. 11-225 – RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A LETTER OF AGREEMENT WITH THE LAND-OF-SKY REGIONAL COUNCIL FOR A BROWNFIELDS ASSESSMENT FUNDING GRANT**

Summary: The consideration by Council to authorize the City Manager to sign a letter of agreement to verify that the City of Asheville, NC, agrees to be a member of the Regional Brownfields Initiative Coalition for the purpose of applying for and the subsequent award of a US Environmental Protection Agency (EPA) Brownfields Assessment Coalition Grant, and that the Land of Sky Regional Council of Government (LOSRC) will be the lead member of the Coalition for the purpose of the grant application and subsequent award.

The LOSRC submitted a Brownfields Assessment Grant application to EPA on behalf of the City of Asheville in 2007; the program was successfully funded in the amount of $400,000, as was a separate regional (four-county) grant application. Land of Sky, using the same strategy, submitted separate and unsuccessful grant applications on behalf of the City of Asheville and the region in 2010. LOSRC staff then researched and analyzed current best practices for EPA programs and recommended that applying for a Coalition grant instead of separate grants be

considered by the LOSRC Board. At their October 2011 meeting, The LOSRC board voted to approve LOSRC staff submittal of a Coalition application, and for LOSRC staff to pursue the signing of Letters of Agreement with each of the proposed Coalition partners.

This action aligns with Council's Strategic Goals related under Job Growth and Community Development, specifically Goal 1, objective 3: partner in regional economic development strategies and Goal 2, objective 1: Promote sustainable, high-density, infill growth that makes efficient use of existing resources.

Pros:

- City promotes sustainable infill development through re-use of commercial properties
- City promotes safety of citizens through potential clean up of hazardous materials
- City re-establishes brownfield redevelopment assistance as part of the toolbox of incentives for sustainable development

Cons:

- None noted

No fiscal impact. Any grant awards will be received and administered by Land of Sky Regional Council of Government. Program participation expected of City staff includes only existing resources.

Staff recommends Council authorize the City Manager to sign the letter of agreement.

**RESOLUTION BOOK NO. 34 – PAGE 197**

**F. ORDINANCE NO. 4031 - ORDINANCE AMENDING SECTION 12-42 TO CLARIFY WHERE CONCEALED HANDGUNS ARE PROHIBITED ON CITY PROPERTY**

Summary: The consideration of an ordinance, in response to new State law, clarifying where concealed handguns are prohibited in City recreational facilities.

Pursuant to State law, N. C. Gen. Stat. sec. 14-415.23, North Carolina local governments since 1994 have been able to prohibit the carrying of concealed handguns in all government "buildings, appurtenant premises, and parks." In the 2011 session, the General Assembly adopted Session Law 2011-268, which limits the authorization to prohibit concealed handguns in parks. The new law does allow municipalities to prohibit concealed handguns in "recreational facilities", if the municipality adopts an ordinance to prohibit, by posting, the carrying of a concealed handgun in or on municipal recreational facilities (defined in the new law as including only playgrounds, athletic fields, swimming pools and athletic facilities) that are specifically identified by the unit of local government.

Currently the City has an ordinance, City Code Sec. 12-42, that prohibits the possession of all firearms or weapons in City parks or facilities. This ordinance (Ordinance No. 2121) was adopted by City Council on June 21, 1994. Per the ordinance language, the City Council adopted the ordinance because it had, "determined that it should prohibit firearms or weapons in city parks or other facilities in order to promote public safety." The effect of the new law will be to pre-empt the current ordinance as it applies to the prohibition of concealed handguns in parks. All other provisions of this ordinance would remain in effect.

In order to bring the City's ordinance into compliance with the new law, and to prohibit the possession of concealed handguns in City recreational facilities, as allowed by the new law, several revisions are necessary. These proposed revisions will ensure, to the greatest extent possible under the new law, that the City's policy, as articulated in the 1994 ordinance, of promoting public safety as it relates to the possession of firearms or weapons on or in City owned property, will remain in place. Concealed handguns would continue to be prohibited from certain

recreational facilities, and their appurtenant premises, as identified and defined by the City's Parks Department.

While most of the park areas/facilities clearly fall within the statutory definition of playgrounds, athletic fields, swimming pools and recreational facilities, some areas may fall outside of these definitions, i.e. open park areas that do not clearly have any "facilities" associated with them. This may present some issues in terms of enforcement and we are continuing to review the law.

There are actually very few changes necessary in order to revise the current ordinance language in order to bring it into compliance with the new law and to add a provision prohibiting concealed handguns in recreational facilities.

(a) In order to make the ordinance compliant with the new law, Sec. 12-42 (a) which prohibits firearms and weapons would need to be modified to state that the prohibition does not apply to concealed handguns in parks.
(b) If a new ordinance prohibiting concealed handguns in recreational facilities is adopted, a new section would need to be added, Sec. 12-42 (b), to specifically identify the recreational facilities to which this ordinance would apply.
(c) Additionally, the definition of "recreational facility" would need to be added to Sec. 12-27, "Definitions," and
(d) The term "park" would need to be replaced with the term "recreational facility" in Sec. 12-43, "Posting of Signs," and Sec. 12-44, "Location of Signs."

This new law is effective on December 1, 2011. If Council desires to maintain a prohibition on concealed handguns in City recreational facilities, action is needed.

This matter was presented to the Public Safety Committee on November 15, which supported the proposed revisions, and directed that they be sent to Council for action.

This action complies with the City Council Strategic Operating Plan for Asheville to be safe and secure

Pro:

- Continues, to the fullest extent allowed by law, the prohibition of concealed handguns on City property.

Con:

- Potential difficulty in enforcement.

There will be some cost associated with the posting of new signs in areas that may not have them now. Estimated costs are $1,000.

Adoption of the ordinance is recommended.

In response to Mayor Bellamy, City Attorney Oast said that state law was amended to provide that concealed handguns could be carried in City parks, but if City Council designates certain facilities, those would be areas where handguns could be prohibited. He said that he will review the federal law recently passed to make sure that Asheville is in compliance or if further changes are necessary.

Councilman Bothwell suggested we consider a resolution, similar to Raleigh, disagreeing with the state legislature.

## G. MOTION SETTING A PUBLIC HEARING ON DECEMBER 13, 2011, TO CONSIDER AMENDMENTS TO THE 2010 AND 2011 CONSOLIDATED ANNUAL ACTION PLANS

Summary: The consideration of a motion to set a public hearing on December 13, 2011, for substantial amendments to the 2010-2011 and 2011-2012 Consolidated Annual Actions Plans for CDBG and HOME.

Three Action Plan Amendments are proposed.

1. Homeward Bound requests an amendment to increase their $55,203 2011-2012 CDBG Supportive Housing grant by $28,000. This request is made to allow for a full-time case manager position to be focused on the permanent housing program being run in collaboration with the Asheville Housing Authority.

   Homeward Bound employs case managers to provide direct assistance to chronically homeless persons to allow them to access and retain affordable housing. The partnership with the Housing Authority gives homeless persons priority for public housing and housing choice vouchers. This program has been recognized both by HUD and by the US Interagency Council on Homelessness as a national best practice. Evidence of its effectiveness has been the Point-In-Time Count reduction of the numbers of chronically homeless persons in Asheville, and the 93% retention rate in permanent housing for the persons who have been assisted by this program. This amendment would allow for service to be provided to an additional 5-10 persons currently experiencing chronic homelessness. Sufficient CDBG funds are currently held in contingency to amend this grant at the level requested.

2. Housing Assistance Corporation requests an amendment to increase their $350,000 2010-2011 HOME grant award for their Oak Haven development by $95,000.

   HAC is constructing 56 LIHTC units in Hendersonville for elderly and disabled persons. The project is now under construction. Prior to construction, updated project pricing created a $291,000 finance gap. In order to make up the gap, HAC reduced the project cost by $90,000, and deferred $200,000 of its development fee. HAC seeks $95,000 of additional funding to recover a portion of the deferred development fee. The project would still require a deferred fee of $106,000. Deferred fees affect the sustainability of the organization. The Consortium has $95,000 in available funds, due to the cancellation of the WCCA Rosman development.

3. Western Carolina Community Action is requesting approval to repurpose $15,400 of their 2010-2011 HOME Downpayment Assistance Program grant to Tenant Based Rental Assistance (TBRA).

   WCCA was awarded $23,100 of HOME funds in 2010-2011 to provide downpayment assistance loans to four households in Transylvania County. Transylvania County provided $7,700 in matching funds. Since then, four WCCA clients have been able to become homeowners through the USDA 502 direct lending program without the necessity of using DPA funds, and one additional client has been approved by USDA. WCCA has one loan of $7,000 pending. There are no additional clients seeking assistance at this time. There is no program in Transylvania County that provides security deposit, utility deposit and other upfront rental assistance to low income renters. Ashville's TBRA program has proven very effective in helping low income households secure affordable rental housing, and by so doing house persons who have experienced or are in danger of homelessness. WCCA has operated the HUD Housing Choice

Voucher program in Transylvania County for 35 years, and is a consistent "high performer" in this program.

The draft Action Plan Amendments directly relate to the Council's Strategic Goal of "Affordable."

The Housing and Community Development Committee and Asheville Regional Housing Consortium agree with this recommendation to set the public hearing and amend the plans.

Pro:

- The activities are all eligible activities under CDBG and HOME program rules. These proposed amendments allow for efficient use of funds in a timely fashion, and will assist in meeting overall program goals. The funds will also assist the sponsoring organizations viability and ability to meet community needs.

Con:

- There are none.

The proposed amendments use funds already available through the CDBG and HOME programs. There is no increase in administrative responsibility for the City. No City General Funds are allocated for these programs.

Staff recommends that Council move to set a public hearing on December 13, 2011, for consideration of amendments to the 2010 and 2011 Consolidated Annual Action Plans.

**H. RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES FOR RESIDENTIAL RECYCLING CARTS**

**BUDGET AMENDMENT FROM THE N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES FOR RESIDENTIAL RECYCLING CARTS**

These items were removed from the Consent Agenda for discussion and/or individual votes.

**I. ORDINANCE NO. 4033 - BUDGET AMENDMENT TO REALLOCATE CAPITAL IMPROVEMENT FUNDS FROM THE TRANSIT BUS SHELTER PROJECT TO THE TRANSIT GARAGE ROOF REPAIR PROJECT**

Summary: The consideration of a budget ordinance amendment, in the amount of $35,000, to move previously approved Capital Improvement Funds from the Transit bus shelter project to the Transit garage roof repair project.

In FY 2009-10, City Council approved a capital project budget for the transit operations garage roof repair in the amount of $125,000. The purpose of the project is to repair the roof at the transit operations garage. The subject building, which was constructed in 1971, is a one-story steel and masonry structure containing about 12,600 square feet. The current roof is an EPDM ballasted roof that was installed in 1985. The membrane on the roof has deteriorated to the point that leaking is occurring in the parking shed, vehicle maintenance area, and offices during rain events. This leaking not only creates a safety hazard with the electrical wiring and equipment in the garage but it has also caused the wood to rot around the skylights and flashing at the mechanical units.

The existing insulation has also been damaged and is therefore not energy efficient. It needs to be replaced in the areas where the water damage has occurred. We do not know at this time if any major structural damage has occurred.

The project would replace the existing roof with a new EPDM mechanically adhered roofing system, which would meet current energy conservation requirements and it would provide savings in energy consumption.

The City issued a Request for Qualifications and hired REI Engineers, Inc. (REI) on April 14, 2011, as the engineering firm to design, develop the technical specifications, and manage the construction project. REI developed the specifications and the city released the construction bid on July 22, 2011. The bids received were higher than the budget available and the bid was not awarded.

Even when REI developed new specifications to bid the project again, the existing budget of $125,000 was not enough to make the repairs. Therefore, city staff is requesting the reallocation of $35,000 in the CIP budget from the previously approved bus shelter project to the roof project to be able to complete the necessary roof repairs. The total cost of the project will now be $160,000. Federal Funds will provide 80% of the cost, which equates to $128,000 and the remaining $32,000 will come from the local match.

The project is scheduled to take place during the next eight months.

This action complies with the City Council 2011-12 Strategic Operating Plan within the fiscal responsibility focus area by operating the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- Provides needed maintenance to an aging facility.
- Helps to make the building safe and more energy efficient which should generate savings in energy consumption.
- Federal Funds will provide 80% of the total project cost, which equates to $128,000.

Cons:

- The total cost of the project is $160,000.
- The City's share of the total cost of the project is $32,000.

There is no net financial impact in the Transit Capital Fund. Staff is reallocating existing capital funds to cover the increased cost of the garage roof repairs.

Staff recommends that City Council adopt a budget ordinance amendment to reallocate $35,000 from Federal Funds and Capital Improvement Program Funds to build bus shelters to the project budget for the Transit Operations Garage roof repair project.

**ORDINANCE BOOK NO. 27 – PAGE 222**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Russell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

**ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

**C. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH COPELAND HOLDINGS, LLC FOR SECURITY SERVICES IN THE CITY'S PARKING GARAGES**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Copeland Holdings, LLC for security services in the City's parking garages.

The City of Asheville, through the Parking Services Division, currently operates three parking garages; Civic Center, Rankin Avenue, and Wall Street. A fourth garage, Lexington Avenue Parking Garage will open on or about July 1, 2012. The Parking Services Division uses a combination of City employees and contract security officers to provide security and customer assistance in the garages. Generally, City employees work during the business day and early evenings while contract security is on duty during late nights, weekends, and holidays.

Contracts for security are in effect for three years and the current contract expires on November 30, 2011. In September 2011 the Parking Services Division requested quotes for service from interested vendors resulting in 20 vendors responding. Copeland Holdings, LLC provided the lowest price for the service. Copeland Holdings, LLC, is headquartered in Alpharetta, Georgia, and they have a district office in Burnsville, N.C. On a normal week, a total of 205 hours of security services will be needed. In addition, the Parking Services Division will request additional security support during periods of high demand; for example, Bele Chere, Southern Conference Tournament, Moogfest, employee vacations, or large concerts at the Civic Center. The total cost of the three-year security contract will be $375,000.00 but will not exceed $125,000.00 per fiscal year.

This action complies with the City Council Strategic Operating Plan in that it provides safe facilities for residents and visitors to park in the most cost effective manner.

Pros:

- Provides safe facilities for residents and visitors to park in.
- Using contract security is the most cost effective manner to augment the Parking Services Division's security requirements.
- Achieves the City of Asheville's assurances to its partners at 51 Biltmore that adequate security will be maintained in the Lexington Avenue Parking Garage.

Con:

- Total cost of $375,000.

The necessary funds are already budgeted in the Parking Services Fund's Operating Budget for FY 2011-12.

City staff recommends that City Council adopt a resolution authorizing the City Manager to sign a three-year contract with Copeland, Holdings LLC to provide security services in the City's parking garages at a total cost of $375,000.00; not to exceed $125,000.00 per fiscal year.

Councilman Smith said that Copeland pays their employees $8.00/hour, but the City could provide the service for $137,000 a year. He felt the $12,000 difference is worth further investigation for this service to be performed in-house as it would align with the City's mission of providing living wages.

At Mayor Bellamy's suggestion, Councilman Smith moved to have the Finance Committee review at their next meeting in January whether to enter into this contract or to bring the service in-house. This motion was seconded by Vice-Mayor Newman and carried unanimously.

Director of Transportation Ken Putnam said that the current contract expires at the end of November; however, he said we can do a short-term contract.

**H. RESOLUTION NO. 11-226 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES FOR RESIDENTIAL RECYCLING CARTS**

**ORDINANCE NO. 4032 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES FOR RESIDENTIAL RECYCLING CARTS**

Summary: The consideration of (1) a resolution authorizing the City Manager to accept a grant from the North Carolina Department of Environment and Natural Resources (DENR) to purchase 95 gallon roll-carts for the residential curbside recycling program; and (2) a budget amendment, in the amount of $75,000, for said grant.

As part of the FY 2011-12 Capital Improvement Program, City Council approved a $1.5 million budget for the purchase of 95 gallon recycling containers. The purchase of the new containers was to be fully funded with debt proceeds. After the budget was adopted, staff applied for and was awarded a grant to help offset the cost of purchasing the new 95 gallon recycling carts. The grant award is for the maximum allowable amount of $75,000. Use of these funds will go exclusively to the purchase of new carts. Receipt of this grant will allow the City to reduce the amount of funds borrowed for the purchase of the carts.

This action complies with City Council's Strategic Operating Plan in the following ways: (1) Implement ways to reduce city-wide solid waste; and (2) Identify resources for strategic initiatives and create meaningful performance measures for programs and services.

Pros:

- Support financial responsibility of the recycling program
- Reduces the amount of debt proceeds required to fund the 95-gallon cart purchase

Con:

- None

As noted above, the receipt of this $75,000 grant will lower the amount of debt that the City will incur for the purchase of the 95-gallon recycling carts.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to accept a grant from DENR to purchase 95 gallon roll-carts for the residential curbside recycling program; and (2) a budget amendment, in the amount of $75,000.

In response to Mayor Bellamy, Director of Finance and Management Lauren Bradley said that the $75,000 will reduce the amount of debt that we issue for the roll-carts.

Mayor Bellamy said that she did not support the new recycling program for $1.5 Million, but since we are reducing that amount by $75,000, she would support these motions to help off-set what the tax-payers will have to pay in debt service.

Vice-Mayor Newman moved to adopt Resolution No. 11-226. This motion was seconded by Councilman Russell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 198**

Vice-Mayor Newman moved to adopt Ordinance No. 4032. This motion was seconded by Councilman Russell and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. PRESENTATION OF THE EXTERNAL AUDIT OF THE FISCAL YEAR 2011 COMPREHENSIVE ANNUAL FINANCIAL REPORT

Mr. Brian Broom, Director of Dixon Hughes, PLLC, summarily reviewed with Council the annual audit. He said that the following is the audit and financial statement summary: "Our report for the 2011 audit expresses an unqualified opinion on the fair presentation of the basic financial statements in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our report can be found on Page 1 of the Comprehensive Annual Financial Report (CAFR). Our reports on compliance and internal control, in accordance with Government Auditing Standards, OMB Circular A-133, and the State Single Audit Implementation Act, disclosed one material weakness in internal controls and no instances of non-compliance in the administration of federal and state awards programs. As noted in the City's Corrective Action plan, changes to accounting procedures were implemented during the year which resulted in the City's staff identifying and correcting the material weakness. Our compliance reports and a summary of the results can be found in the Compliance Section of the CAFR. Also, they noted some areas for improvement in the City's accounting function that they have communicated to management in a separate letter dated October 28, 2011." He was pleased to report that the City's fund balance policy is 15% of operating expenditures and that the City's available fund balance for 2011 is 15.2%. He then briefly reviewed the summary of property tax collections and analysis of debt service.

Director of Finance & Management Services Lauren Bradley briefly provided Council with some of the following key highlights regarding the audit from staff's perspective.

***The City's financial statements, internal control, stewardship, accountability and program compliance with federal and state awards continue to receive high marks.***

The independent audit firm is required to conduct an analysis of the City's compliance with various federal and state laws, regulations, contracts and grant agreements. Dixon Hughes reviewed the City's accounting and administrative controls over a wide range of financial transactions such as cash, investments, revenues, receivables, expenditures, payroll, property, debt and grant programs.

Dixon Hughes found no instances of material noncompliance in connection with applicable statutes and regulations regarding expenditures of major federal and state financial assistance programs. This favorable report is due to the significant efforts of City staff and finance department employees in developing and maintaining strong internal financial controls.

There was one material weakness noted in internal control over financial reporting. The City restated beginning net assets in Governmental Activities and Business-type Activities to correct errors in construction in progress and the net OPEB obligation. The necessity of these corrections was discovered as a result of staff's efforts to institute new procedures in connection with capital asset management and control. Those efforts included the development of procedures designed to capture capital expenditures prior to their incurrence and the development of multifunctional teams comprised of budget, finance and the affected departments to improve communication in connection with the recording of capital expenditures and project status. Capital asset identification reviews now occur periodically throughout the fiscal year. The net OPEB obligation restatement related to the methodology of calculating employer contributions to the retiree health plan. City staff, after consultation

with its independent actuaries, determined that the previous methodology understated the employers' contribution resulting in a correction that favorably impacted the City's net assets.

***The independent external auditor gives the City a "clean" opinion on financial statements.***

Dixon Hughes has provided the City with an unqualified, or "clean," opinion that the financial statements are fairly presented in conformity with generally accepted accounting principles. This opinion is the highest form of opinion that the external auditors can express on the presentation of the City's financial statements.

***Timeliness of audit completion significantly improved.***

As of October 28, 2011, the City had fully completed the audit process and was ready to submit its Comprehensive Annual Financial Report (CAFR) to the Local Government Commission (LGC) in compliance with its published October 31 deadline for submission, as well as City Council's direction to meet the deadline. As illustrated by the table below, completion and delivery of the CAFR by October 28 with presentation to be made at the November 22 City Council meeting is a significant improvement in timeline since 2006. Thanks go to the Finance Committee for its leadership throughout the audit process and to staff and Dixon Hughes for working diligently during the last several months to meet the schedule.

| Fiscal Year | Opinion Letter | Council Presentation |
|---|---|---|
| FY2011 | 10/28/2011 | 11/22/2011 |
| FY2010 | 12/28/2010 | 1/25/2011 |
| FY2009 | 11/12/2009 | 1/12/2010 |
| FY2008 (2) | 12/30/2008 | 2/10/2009 |
| FY2007 (1) | 10/31/2007 | 1/8/2008 |
| FY2006 | 10/27/2006 | 12/12/2006 |

(1) SAS No. 103
(2) SAS No. 104 - No. 111
SAS - Statement on Auditing Standards issued by the AICPA
Relates to risk assessment standards; effect of delaying the opinion letter date

***General Fund financial results are as predicted - breakeven.***

Due to a continued soft economy and uncertainty surrounding revenue projections, City staff implemented various savings strategies throughout FY 2011 to ensure the best possible General Fund operating results at year end. While revenues came in under budget, staff made efforts to control expenditures. As a result, revenues over expenditures were $1,870,000.

During the year, $4,747,000 was appropriated from different categories of General Fund fund balance, including appropriations for FY 2010 encumbrances, the transfer to the Festival Fund to address its cumulative deficit net asset position and thereby close the fund, and other appropriations for high priority expenditures. For the year, including transfers out of $4,164,000, expenditures exceeded revenues by $2,294,000. Of the $2,294,000, the transfer to the Festival Fund and the allocation for City Hall repairs represented $2,000,000.

She showed a table of the General Fund revenues, expenditures and changes in fund balance for FY 2011.

***General Fund unassigned fund balance has improved and meets the 15% policy threshold.***

Unassigned fund balance improved year over year, up from $12,319,000 in FY 2010 to $13,176,000 at the end of FY 2011. For FY 2011, this amount represents 15.2% of expenditures and transfers to other funds. The improvement in undesignated fund balance can be attributed to several factors. One of those factors includes improved financial performance in the Civic Center Fund, thereby permitting the General Fund to avoid making an operating transfer to the Civic Center Fund to address the fund's operating deficit. The amount budgeted for this subsidy in FY2011 was $392,594; the amount was not transferred. Another factor that contributed to the improved fund balance position was a transfer back to the General Fund in the amount of $275,000 from the Special Projects/Grants Fund as a result of project savings in those funds. The final factor contributing to a higher fund balance related to the staff's effort at conducting a thorough review of outstanding contracts and purchase orders which resulted in the liquidation of more than $246,000 in encumbrances that had been reserved at FY2010 year-end.

City Council has established a threshold of 15% as the minimum amount necessary to support the General Fund's working capital levels. The FY 2011 fund balance level meets this threshold. She showed a table which reflects the components of fund balance that appear in the CAFR.

***Financial performance as predicted or better than budget in nearly every proprietary fund.***

Despite the declining economy, financial results in most of the City's business-type activities experienced positive net income for FY 2011. Exceptions include the Golf Fund and the Festival Fund, areas in which the City has or will restructure operations to improve financial results. Within the Internal Service Fund, it is worth noting that the revenues exceeded expenditures in the Health Care program by $7,189, illustrating that the changes to benefits implemented in FY 2011 allowed the program to essentially break even. She showed a table which summarized the operating activity in these funds.

***Fund balance levels in some proprietary funds may allow for enhanced capital investment in FY 2012-2013.***

In September 2011, City Council adopted fund balance targets for all funds as part of its Financial Policy. At the end of FY 2011, four enterprise funds exceeded the established fund balance targets. It is staff's recommendation that City Council consider appropriating a portion of these funds for identified capital needs in the FY 2012-2013 budget cycle. She showed a table which illustrates year over year changes in fund balance for the enterprise funds as well as a comparison to the adopted fund balance targets.

We are pleased to present the audit and look forward to continuing to improve the City's financial reporting and planning efforts. We would also like to express our appreciation to the numerous city employees who contributed to successful financial management in FY 2011, and to those employees, especially in the Finance Department, who worked tirelessly on the audit process.

The City Council Finance Committee received monthly reports on the audit process since summer 2011.

This action supports the City of Asheville's strategic goal to operate the City to the highest levels of fiscal responsibility.

Pros:

- City received a "clean" opinion on financial statements and high marks on internal control, stewardship, accountability and program compliance with federal and state awards.
- Timeliness of audit completion significantly improved.
- General Fund undesignated fund balance meets City Council's 15% policy.
- Financial performance in nearly all funds as predicted or better than budget.
- Fund balance levels in some enterprise funds may allow for additional capital investment.

Con:

- None noted.

Staff recommends that City Council accept the FY 2011 Comprehensive Annual Financial Report.

In response to Mayor Bellamy, Ms. Bradley felt the single largest thing we can do to position ourselves to improve our credit rating is to work toward fully funding our Other Post Employment Benefit Fund obligation and consider discontinuing retiree health care insurance for future employees. She felt that would be looked at very favorably by the credit rating agencies.

It was the consensus of Council to accept the Comprehensive Annual Financial Report.

**B. THE WILMA DYKEMAN RIVERWAY IN ACTION UPDATE**

Ms. Karen Cragnolin, Executive Director of RiverLink, said the Wilma Dykeman Riverway Plan is a 17 mile plan that looked at where the tax and population base is for the entire watershed and then looked at the fact that we had two rivers running through our City. The 7 district plan was adopted by City Council in 2004. The Plan has three strategies for economic development. In 2004, they looked at (1) road costs per mile - $2 million a mile, 17 miles @ 2 million = $34 million (Can be paid for with state and federal highway funds); (2) Current tax base (Northern City Limits to Fairview Road, exclusive of Sayles Bleachery) (a) Current tax value of land - $17 million; (b) Current tax value of improvements (buildings) - $11 million for a total of $28 million; and (3) Tax Base Enhancement Estimated *(Northern City Limits to Fairview Road, exclusive of Sayles Bleachery)* (a) Estimated single story redevelopment = $106 million; and (2) Estimated Mixed Use vertical redevelopment in accordance with plan = $214 million.

The Plan looks at recreation, arts & crafts and wellness.

Economic impact for recreation is (1) Tourism $16.5 billion industry (a) 49 million visitors primarily for natural resources; (b) Fishing – commercial and recreations - $1 billion; and (c) Paddle Sports - $100 million; (2) 60 million Americans (18 years and older) bicycle each year; (3) Bicycling contributes $133 billion to the U.S. economy; (4) Supports nearly 1.1 million jobs across the U.S.; (5) Generates 17.7 billion in annual federal and state tax revenue; (6) Produces 53.1 billion annually in retail sales and services; (7) $6.2 billion in bicycling gear sales and services; (8) $46.9 billion in bicycling trip-related expenditures; (9) Provides sustainable growth in rural communities; and (10) $4.3 billion 3.4 million participants.

She showed graphics and photographs of things happening around Pearson Bridge and the historic Pearson Bridge. She also spoke about the Easy Street Discount Tires & Auto Service store being converted to an outdoor adventure building. They have received several applications for utilizing the building for bike rentals/charter fishing trips/camping equipment, etc. Rentals would include (1) bicycles (a) a wide selection of road bikes and mountain bikes; and (b) helmets; (2) fishing gear (a) rod and reel; (b) fly rods; (c) landing net; (d) bait; and (e) pads; (3) boats (a) high-quality flatwater and whitewater boats in a variety of sizes and styles (a) stand up paddleboards; (b) personal floatation devices; (c) helmets; (d) skirts; (e) paddles; (f) dry bags; (g)

bilge pump; and (h) paddle floats; and (4) camping equipment (a) tents; (b) sleeping bags and pads; (c) stoves; (d) water filter; (e) dining fly; (f) head lamps; and (g) compass and maps.

She said that several years ago the City purchased .47 acres at 706 Riverside Drive designated River District. She said that the operators for the outdoor recreation center really need that property to park vehicles, locate boats, stack bicycles, etc. She asked if the City would transfer that .47 acre ($5,000 tax value) property to RiverLink. The Brownfields group is willing to put this property into the system as an addendum to their application as is the State hazardous waste person.

Mayor Bellamy asked Ms. Cragnolin to put their property request in writing to the City Clerk and the City will follow the normal procedures for requests of this nature.

Ms. Cragnolin was pleased to announce that the last week in April, RiverLink will be hosting the International River Management Society Conference.

**C. ABC BOARD REPORT**

Chairman of the ABC Board Charles Worley said that the Board has had its challenges over the last three months as a result of the report of the Alcohol Law Enforcement Division report on our General Manager. He said they quickly responded to that report and to the State ABC Commission concerns that were properly raised as a result of that report and there are several things to note.

First, no member of the board was implicated in that report as having participated or known about any of the actions that were going on. Those activities took place outside of the scope of the day-to-day operations of the Asheville ABC System. They did not affect the operation of the system in any way that we can discern, and finally the Board responded quickly and appropriately concerning the matters raised in that report.

He obtained a copy of that report in the late afternoon of September 22, and immediately emailed a copy to all of the other Board members. On September 27 they had a Board meeting and a thorough discussion in closed session. Following that closed session, their General Manager resigned and the Board accepted his resignation.

In order to prevent similar activities from occurring in the future, they took immediate action prior to the completion and distribution of the ALE Report and before they knew or had any hint of the contents of that report.

First, they adopted an ethics policy in January of last year which closely mirrors the ethics policy of the City of Asheville. They then adopted several other policies in June of this year - a credit card policy, a travel policy, a gift policy and a purchasing policy, all of which were designed to tighten the physical controls and ethical controls for the ABC system.

Following the resignation of their General Manager, they began the process of a search for a new general manager or CEO and that search is ongoing, but we have just hired an interim general manager. He was pleased to announce that Mr. Mark Combs, former Public Works Director of the City of Asheville, has accepted the position of interim general manager and in fact began work yesterday. Mr. Combs remains a candidate for the permanent position but they will continue and broaden the search to be sure that they have the very best applicant for that position.

He provided Council with a few statistics to show how well they have done even during the economic downturn. Over the last five years they have distributed over $3.9 million to the City of Asheville and $1.3 million to Buncombe County. That's a total of $5.2 million that they have distributed to local government in the last five years. They've weathered the opening of new

ABC systems to our immediate north - openings that have cost our Merrimon Avenue store in particular, some $250,000 per month in lost sales, and they have survived a substantial increase in the State excise tax in 2010 that cost us approximately $400,000 in profits.

He then gave a quick overview of how this year is starting out. A comparison of the 1st quarter of this year (July through September) with the same time period last year shows that Sales are up over 10%, Gross profit is up over 11%, total income before distributions - up almost 33% and Distributions to City and County are up over 38% - $207,600 vs. $150,300 last year to the City.

During the last five years they had an extensive capital improvements program. They opened a new store on Sweeten Creek Road in November of last year, a new Tunnel Road store in July of 2009 and a new Leicester store in July 2009. They opened their new Long Shoals store in 2007 and they remodeled the Merrimon Avenue store in 2007 and the Louisiana Avenue store in 2008.

They are successfully pursuing a plan to build new stores, remodel old stores and provide a pleasant customer experience. And they are funding drug and alcohol abuse programs, as well as educational programs to help prevent underage drinking. They believe that they are carrying out their mission of controlling the sale of alcoholic beverages, educating the public and the establishments that sell alcoholic beverages to prevent improper use of alcoholic beverages and underage drinking and providing a safe and pleasant environment in which the sale of alcoholic beverages take place.

Mayor Bellamy thanked Mr. Worley for the timeline and how the Board handled the issues.

Vice-Mayor Newman said that after the report came out, the Boards & Commissions Committee invited Mr. Worley to their meeting for an update. After hearing the report, they felt it would be valuable to have Mr. Worley fully update the entire Council and the public and made arrangements for him to attend this meeting.

Councilman Bothwell said it was a fact that the report listed the ABC Board as having committed offenses, listing malfeasance, embezzlement, obtaining property by false pretenses, etc. including 59 counts of store personnel accepting things of value. Given that the Board is there to oversee the operations of the agency, he asked Mr. Worley to explain how the ALE considered it serious enough to present charges against the Board members.

Mr. Worley responded that the activities that took place, took place outside the scope of the day to day activities and operations of the ABC system. He struggled to find out what they could have done to have found out what was going on and he could not find that answer. He felt that is true of any board that has an oversight responsibility – there is no way to monitor the activities of all the employees all the time to find out what they are doing. You hope that things show up that bad things are happening so you can deal with them. That did happen here and they did deal with it. In response to the author of the ALE report listing 59 counts against the ABC Board, those were not charges, but simply his observations. If you read the report, there was not a single instance of a single member of the ABC Board participating in any of those activities. He noted that there were allegations that ABC Board members carried liquor out after board meeting and that is absolutely false during the entire time he has been associated with that board. A lot were allegations but nothing substantiated.

As Mr. Worley's term on the ABC Board recently expired, he thanked City Council for allowing him to serve his two full successive terms on the ABC Board. He was also pleased that the ABC Board continues to contribute to the City.

**D. QUARTERLY REPORTS**

**Finance Committee Chair Report**

Councilman Russell, Chairman of the Finance Committee, updated Council on some major accomplishments during the second quarter of FY 2011. Those highlights are as follows:

- **FY 2011 Annual Audit**
  The Finance Committee received monthly updates on the annual audit process since July 2011. Brian Broom, head auditor for Dixon, Hughes gave positive reports on the progress of the audit and the schedule. As of this report, the audit was completed prior to the October 31 deadline. The audit is scheduled to be presented to City Council at the November 22, 2011, meeting.

- **Water Rate Analysis**
  During the FY 2012 budget adoption, City Council recommended that the Finance Committee review the adopted water rate structure and its impact on large manufacturers as well as the possibility of creating a manufacturing customer class. At the direction of the committee, staff conducted a financial analysis on the impact that an alternative implementation of proposed rates would have on overall revenue projections. The committee reviewed the analysis at the September 27, 2011, meeting. Staff will bring forward the same analysis at the November 22, 2011, City Council meeting.

- **Other Post Employment Benefits (OPEB)**
  The Finance Committee received a briefing on OPEB and the long-term financial sustainability of offering retiree health care coverage. In 2008, the Governmental Accounting Standards Board (GASB) required local governments to recognize expenses for the cost of retiree health care benefits as those benefits are earned by employees during their active service life. The committee directed staff to bring forward a plan and associated recommendations for addressing the City's OPEB liability, which will come forward to the full City Council on November 22, 2011.

- **City of Asheville Financial Policy**
  As part of the annual review process for the audit, the committee reviewed the draft of the City of Asheville's finance policy. There were two key modifications staff made to the policy: the adoption of fund balance targets for all funds and a section that clarifies when interfund transfers are made. The policy was adopted by full City Council at the October meeting.

- **Community Media Development Request for Proposals (RFP)**
  A joint city-county evaluation panel reviewed the nine submitted proposals during this RFP process. After it was the consensus of the review panel that the quality of the submissions fell below expectations, the committee recommended that the panel invite the organizations that submitted the two highest scoring proposals to make presentations to the panel. Based on those presentations, the review panel selected the highest scoring group. At the October 11, 2011, City Council meeting, due to concerns that the proposals did not meet City Council's intent, funding was not authorized.

- **City of Asheville Combined Campaign/Earthshare Proposal**
  At the invitation of a committee member, a representative from Earthshare made a presentation requesting that the City consider implementing a combined campaign that includes other charitable federations. This item went to City Council for consideration at the October 25, 2011, meeting. Council directed staff to work with Earthshare and the United Way to determine if a mutually beneficial proposal could be crafted for Council consideration.

- **Golf Course Request for Information (RFI)**
  At City Council direction, staff is exploring alternative models of golf course operations to ensure the financial viability of the service. Staff updated the Finance Committee on their efforts to develop a Request for Information from golf course providers to determine what variables should be included in a formal RFP. Responses to the RFI are due December 12, 2011, and staff expects to update City Council on progress during the third quarter of the fiscal year.

**Public Safety Committee Chair Report**

Councilman Russell, Chairman of the Public Safety Committee, updated Council on some of the following major accomplishments during the first quarter of FY 2011-12 (1) Positive recommendation from the Public Safety Committee for Mobile Food Vending Amendment to be moved to full council; the amendment was passed; (2) The Focus Deterrence/Changing Together program received a positive recommendation from the Public Safety Committee for the City of Asheville to acquire program coordination responsibilities; (3) Regional Response Team 6 (RRT 6), hosted by Asheville Fire and Rescue received a non-matching grant from the NC Department of Crime Control and Public Safety, Division of Emergency Management for the purpose of procuring equipment and training in the amount of $25,000; and (4) Firehouse Subs Safety Foundation awarded Asheville Fire and Rescue a Technical Rescue Trailer valued at $16,994.47.

In response to Mayor Bellamy about the Committee's discussion regarding cameras at an Occupy Asheville rally, Councilman Russell stated that was not discussed at their Committee. Assistant City Manager Jeff Richardson, support staff for the Public Safety Committee, recognized this was an issue that Council was hearing from the community, but the challenge last week was the shear volume of agenda items for the Public Safety Committee. He said that staff has talked internally regarding the use of cameras for a wide range of activities. It was his recommendation that at the next regularly scheduled Public Safety Committee meeting staff come prepared to present information on the use of video, best practices used throughout police departments throughout the nature, what our current use is, advantages/disadvantages, etc. and then let the Committee determine what the next appropriate next step.

Mayor Bellamy said that she would forward Mr. Richardson the e-mails she has received regarding concerns. The Committee can then address those specific questions.

**Planning & Economic Development Committee**

Councilman Davis, Chair of the Planning & Economic Development Committee, briefly updated the Council on some items the Planning & Economic Development Committee has have reviewed. Most recently, they reviewed a request from the River District Design Review Committee for a boundary and responsibilities change. He requested Council direction on whether to refer the matter to the Boards & Commissions Committee or directly to the Planning & Zoning Commission which will then come back to City Council for a public hearing.

It was the consensus of the Council to refer the matter directly to the Planning & Zoning Commission.

**Strategic Operating Plan**

Assistant City Manager Jeff Richardson said that the Asheville City Council identified short and long term goals at the February, 2011 strategic planning retreat and staff is providing its quarterly updates on progress of the five key focus areas.

City Council asked City staff to provide quarterly updates on key strategic initiatives associated with the five primary focus areas of the City's Strategic Plan. Staff has tracked projects using performance indicators and measurements through the Fiscal Year 2011-12.

Due to the significant work associated with end-of-year operations, there will not be a formal quarterly update presentation regarding the progress of the Strategic Operating Plan. However, staff provided Council with the quarterly economic indicators, and crime statistics for this quarter. The next quarterly update presentation on Council's Strategic Operating Plan is scheduled for February 28, 2012.

In addition, City Council has asked for an activity report on a quarterly basis of the Domestic Partner Registry. Since the Registry began on May 2, 2011, a total of 25 couples have registered.

At the request of Mayor Bellamy, Mr. Richardson highlighted the unemployment rate, which is good news for the community.

**Financial Report**

Budget Manager Tony McDowell provided Council with the following financial information which reflects the City's overall financial position for the fiscal year through September 2011.

*Amendments.* The General Fund budget presented in this first quarter report reflects the adopted budget of $87,645,955; along with four budget amendments approved by Council during the first quarter that totaled $492,850. A summary of the four amendments is presented below. None of the amendments involved an appropriation from fund balance.

| | |
|---|---|
| Adopted Budget | 87,645,955 |
| Budget Amendments: | |
| NCDENR Park Recycling Bin Grant | 30,000 |
| NC Arts Council Grassroots Arts Grant | 49,850 |
| Buncombe County/Changing Together Partnership | 63,000 |
| Debt-Funded Purchase of Computer Equipment | 350,000 |
| 9/30/2011 Budget | $88,138,805 |

*Revenues.* Through September 30, 2011, the City has collected $9,853,268 in General Fund revenue, which represents approximately 11.2% of the total General Fund revenue budget. There is no change in property tax estimates to report. Staff will receive updated property tax data from Buncombe County in late December or early January. Sales tax estimates also appear to be on track to meet budget. Staff is projecting that state utility tax revenue and several other smaller revenues will fall short of budget in the current year based on how those revenues came in during FY 2010-11. Because of the projected under-performance in these revenues, staff is currently estimating that *total FY 2011-12 General Fund revenue will come in under budget by $630,000 or 0.7%.*

*Expenditures.* General Fund expenditures through September 30, 2011, total $18,184,586 or 20.6% of the budget, which is typical for this point in the fiscal year. One area to note on the expenditure side is fuel expenses. Average fuel prices in the first quarter were approximately 40% higher than they were one year ago. Prices have moderated some since September, but staff will need to continue to closely monitor fuel expenses throughout the year. In order to address the projected under performance in revenues and fuel expenses, staff continues to actively pursue savings strategies as it has in previous years. *These strategies include evaluating vacancies as they occur, line item reductions, and seeking opportunities to maximize efficiency in operations. Staff anticipates being able to generate the necessary expenditure savings with these strategies to fully offset the expected revenue shortfall.*

*Fund Balance.* The City ended FY 2010-11 with available fund balance of $13.18 million, which equated to 15.2% of FY 2010-11 expenditures. *With implementation of the savings*

*strategies mentioned above, FY 2011-12 expenditures are expected to equal revenues, which means available fund balance will remain at $13.18 million or 15.2% of estimated expenditures.*

In summary, he said that regarding capital improvements (1) $267,000 is in our capital reserve account; (2) the following are the FY 2012 debt-funded projects moving forward: City Hall exterior, new sidewalk construction, greenway development and vehicle replacements - Debt is to be issued in March 2012; and (3) City Hall service elevator repairs is $100,000. He explained that we will reallocate some of the building maintenance funding this year for the elevator repairs, which may mean we may have to delay one routine roof replacement project to next fiscal year.

**IV. PUBLIC HEARINGS:**

**A. CONTINUATION OF PUBLIC HEARING TO CONSIDER CLOSING SEVERAL PORTIONS OF UNOPENED RIGHTS-OF-WAY AND CITY STREETS WITHIN THE MONTFORD COMMONS DEVELOPMENT AREA**

Mayor Bellamy said that the City has been notified that the petitioner has withdrawn their request for these closings.

**B. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING AN ALLEY BETWEEN NEBRASKA STREET AND NEVADA AVENUE**

**RESOLUTION NO. 11-227 - RESOLUTION TO PERMANENTLY CLOSE AN ALLEY BETWEEN NEBRASKA STREET AND NEVADA AVENUE**

Public Works Director Cathy Ball said that this is the consideration of a resolution to permanently close an alley between Nebraska Street and Nevada Avenue.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, City Council at their regular meeting on October 11, 2011, initiated the closure process, on behalf of the adjacent property owners, Julia Watts Schafer, Edward V. Hardin, Jane P. Ward, Hannah Danise, Dewitt Hurst, Kandi Kilpatrick, Alexander Brown, Bonnie R. Locklear, Jack Askew and Katherine Folkman, and Joanne C. Gunter, who have requested the City of Asheville to permanently close an alley between Nebraska Street and Nevada Avenue. Three (3) adjacent property owners did not join the petition to close the alley between Nebraska Street and Nevada Avenue and were sent a copy of the Resolution of Intent via certified mail.

The Greenway Commission met on August 11, 2011. The Commission discussed various subject areas and voted 4-1 against supporting the closure.

***The Asheville City Development Plan 2025*** (comprehensive plan) exemplifies a 'Smart Growth' vision for growth and development in Asheville. Included in this vision is an inextricable connection between transportation and development where access to property supports sustainable infill development and combats sprawl. This section of west Asheville is well suited to sustainable infill development given its proximity to transportation, employment centers, and goods & services along Haywood Road. Additionally, unlike many other unopened rights-of-way in the city, Moody Alley is relatively flat and developable and all of the adjacent properties allow for multi-family development (RM-8 zoning). Of these adjacent properties, approximately half are of sufficient size to support more than one full residential unit, in some cases up to 4 units; while the other half can support, at a minimum, an accessory apartment. Given a variety of site constraints the most practical means of access to construct additional units would be through Moody Alley which would provide additional flexibility and options for sensitive siting and design.

Besides improving opportunities for sustainable infill development, alleys provide a variety of other benefits including:

- Access to off-street parking for residents and delivery vehicles
- Off-street pedestrian and bike connectivity
- Creates multi-purpose common space for property owners
- Provides accessible location for utility placement

Not all subdivision plats and residential communities can accommodate alley access, and not all unopened alleys can be developed in a practical manner that will help meet carbon reduction goals by controlling sprawl. There are, however, numerous opportunities that still exist, and to withdraw public dedication of Moody Alley will diminish the city's ability to adapt to meet future needs for housing and connectivity in this area. New recognition for these alleyways (and other rights-of-way) is a phenomenon that is being observed across the United States and many cities are now developing guidelines to develop, recapture, and retrofit these spaces to address present and future community needs.

City Council waived the $4,000 closure fee at the City Council meeting of October 11, 2011.

City staff does not recommend City Council adopt the resolution to permanently close an alley between Nebraska Street and Nevada Avenue. A resolution is provided should City Council wish to approve the closure.

City Attorney Oast understood that a temporary restraining order that prohibits work in the alley is still in effect.

When Vice-Mayor Newman asked if the Greenway Commission reached their conclusion not to close the alley because the property has value for a greenway, Assistant Planning & Development Director Shannon Tuch did not wish to speak for the Commission; however, she thought part of their concern over some of the other land use issues raised. It's not to say that that strip of land wouldn't have some value as a potential pedestrian or bicycle connection, but not necessarily for a greenway.

Vice-Mayor Newman wondered if Council needed to give clarification to the Greenway Commission to specifically look at whether land has value for a greenway and not to weigh in on larger land use questions.

At 6:16 p.m., Mayor Bellamy opened up the public hearing.

The following individuals spoke in support of closing the alley for various reasons, some being, but are not limited to: this 20-foot wide alley was dedicated in the 1920's but never formally accepted by the City; there are no records of the alley having been used as a road, but only as an extension of neighbor's backyards; the alley is a slice of wilderness and provides peace and harmony in the backyards of adjoining property owners; Mr. Jay Fiano began cutting trees and brush in the alley without any discussion of the adjoining property owners; opening up the alley will only benefit one of many property owners abutting the alley; state statutes allow City Council to close an alley; 11 out of 13 adjacent property owners want the alley closed; this issue has no bearing on the pending litigation even though the Court has granted a preliminary injunction forbidding Mr. Fiano from cutting anymore foliage or trees in the alley; the public interest is being served by the alley being closed; Mr. Fiano does have access to a public right-of-way; alley is a source of privacy and security; if Mr. Fiano had not over-built on his property, there would not have been any need for his to request the alley to be opened:

Ms. Julia Schafer, resident on Nebraska
Mr. Jason Peltz, attorney representing Ms. Julia Schafer
Mr. Brian Lee, adjoining property owner
Ms. Jane Ward, resident on Nebraska Street
Ms. Barbara Hurst, adjoining property owner
Mr. Steven Brewer, resident on Nebraska
Ms. Tray Groce, resident on Nebraska
Adjoining property owner
Mr. Timothy Sadler
Mr. Evan Schafer, resident on Nebraska
Mr. Dewitt Hurst, adjoining property owner
Ms. Amena Spangler, west Asheville resident

The following individuals spoke in support of not closing the alley for various reasons, some being, but are not limited to: staff says the topography of the area is appropriate for a road; the road has been shown on City maps for over 100 years; Council should listen to their staff and the Greenway Commission not to close the alley; City Council should not intervene in what is clearly a disagreement between two property owners (Ms. Schafer and Mr. Fiano); builders need access to rights-of-way to complete infill development; private parties should not be allowed to close public rights-of-way; the property could be used for a greenway; there are not a lot of areas suitable for infill development and we should use existing infrastructure and zoning to take advantage of those areas; area is suitable for more dense development, which will reduce sprawl; postpone action to allow property owners to find the best solution for the neighborhood:

Mr. Robert Deutsch, attorney representing Mr. Jay Fiano
Mr. Raymond Thompson, President of Sure Foot Builders
Mr. Russell Davis, Civil Engineer
Mr. Marcus Renner, representing Green Building Council of WNC
Mr. Michael Silverman, resident on Nebraska Street

Ms. Pat Johnson said that Mr. Fiano built his house and then sold her the two lots of land left over, which in effect made his back part land-locked. It was his choice on whether to sell the property or to have access.

Mr. Jay Fiano, adjoining property owner, apologized for disrupting his neighborhood and not being more open with his neighbors. It was his understanding that he need only work with the Planning & Zoning Department and the Building Safety Department for the issuance of permits for clearing the alley. He said that he divided his property and since the back portion did not abut a publicly maintained street, there was the concept that it may be easier to access the back parcel through the alleyway. He felt he may be able to work this out in a manner that is more beneficial to his neighbors. He asked Council to defer action for potential mediation from the City Attorney or other suitable party.

City Attorney Oast read the pertinent portion of N.C. Gen. Stat. sec. 160A-299:
"At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the Council after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the council may adopt an order closing the street or alley."

At 7:04 p.m., Mayor Bellamy closed the public hearing.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Newman moved to adopt Resolution No. 11-227 to close the alley between Nebraska Street and Nevada Avenue. This motion was seconded by Councilman Smith.

Vice-Mayor Newman felt the basic question is whether or not there should be a public street constructed in this location for the public's interest. After hearing the large majority of residents who live in the area and a visit to the site, he felt it was against the public interest to have a new public street in this location. There are paper alleys all over Asheville and when people where building they had ideas where streets might be located. Some streets were built and some were not. Since then mature neighborhoods have been established and the neighbors did not want those new streets built. He appreciated staff's interest in preserving infill development; however, this is a location where building a new public street is not worth the cost to the neighborhood.

In response to Councilwoman Manheimer on whether there is an access issue, Ms. Tuch said that the statutes describe reasonable access. All lots currently front publicly maintained streets. Mr. Fiano's lot was larger and he divided some of his property off to create an "L". In terms of reasonable access, the property is zoned multi-family and there is a question about whether or not it's reasonable to expect that someone may want to add another residential unit to back of the property that is large enough to support more than one unit.

Mr. Deutsch understood that the "L" shaped lot would support an ancillary structure in the back but if it is built his only access is through the alley.

In response to Councilwoman Manheimer, Ms. Ball said that 11 out of 13 adjacent property owners signed the petition to close the alley.

Councilwoman Manheimer said that there is a platted alley that appears as an easement in the deeds for most of the properties adjacent to this strip of land. That means there is a private right to use it to those people that are adjacent to the alley. She thinks there will still be (if Council chooses to close this alley) a legal question of whether or not the affected land owners have the right to use the 20-ft wide strip regardless of whether the City has an interest in it or not. That being said, that is an issue for those property owners. Based upon what she had heard tonight, she will support the closing.

In response to Councilman Davis, Ms. Ball said that a petition to close can be initiated by one person.

City Attorney Oast said that if Council chooses to close the alley, the last "Whereas" in the resolution will need to be amended (since there has been objections to the alley closing) to read: "Whereas, Council finds that the closing is not contrary to the public interest and that no individual owning property in the vicinity of the street or alley or in the subdivision of which it is located will be deprived of reasonable means of ingress and egress to their property." Vice-Mayor Newman and Councilman Smith agreed to amend the motion as stated by City Attorney Oast.

In response to Councilman Russell, Ms. Ball said if someone came in and were able to show proof that a paper alley allowed for the use of their property through their deed, (typically an opinion by an attorney), then we would approve a driveway permit from the street to allow that to occur.

In response to Councilman Bothwell, Ms. Tuch said that all properties could support at a minimum one accessory unit. However, whether or not it was most appropriately reached by alley or street would be up to the individual property owner.

The amended motion made by Vice-Mayor Newman and seconded by Councilman Smith carried unanimously.

**Closed Session**

At 7:22 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: Jensen, et al; City of Asheville (Biltmore Lake Annexation Lawsuit). The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 7:49 p.m., Councilman Smith moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

**C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 5 WOODLAWN AVENUE FOR A BED & BREAKFAST INN**

**ORDINANCE NO. 4034 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 5 WOODLAWN AVENUE FOR A BED & BREAKFAST INN**

Deputy City Clerk Kleisler administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast explained that this process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

City Attorney Oast asked if any Council member has any special knowledge associated with this project that they disclose it at this time.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 7:50 p.m.

Urban Planner Julia Fields submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Fields said that the applicant, Fred Eggerton is requesting approval of a conditional use permit for property located at 5 Woodlawn Avenue (Location Map – Attachment to City Exhibit 3). The site contains the Rankin-Bearden House which was designated as a local historic landmark by the Asheville City Council on November 14, 2006. The parcel on which this historic home is located is zoned RM-8 (Residential Multi-Family Medium Density District) and is .43 acres in size (18,810 square feet). The home contains 4,180 square feet of living space with 1,280 square feet of porches/decks. There are five bedrooms in the structure.

The structure was originally constructed as a home circa 1848 and is believed to be the oldest intact frame house in Asheville and one of the few remaining antebellum houses in Buncombe County (Front Façade – City Exhibit 4). The property was in decline and being used as a boarding house when the applicant purchased it in 1993 and began restoration (Existing Condition – City Exhibit 5).

The applicant is requesting the issuance of a conditional use permit pursuant to Section 7-16-2(d)(1) of the City's Unified Development Ordinance (UDO).This section provides for historic landmarks to be issued a conditional use permit (in all residential districts) to make use of the property in a manner other than is allowed in the zoning district applied to the property. In this instance, the applicable zoning, RM-8, allows for Bed and Breakfast Inns as a Use by Right Subject to Special Requirements (USSR). However, because the existing property is less than 20,000 square feet in size (a USSR standard for Bed and Breakfast Inns; not variable) the applicant is pursuing the conditional use permit.

Conditional use permit applications for historic landmarks must show:

- That the property is designated as a historic landmark. This was done in 2006.
- That the current usage of the property is such that the property cannot be preserved and the granting of a conditional use permit enables its preservation. Mr. Eggerton has satisfied the Historic Resources Commission on this issue.
- That the use which may be permitted is not inconsistent with the design and or uses for which the structure had been designed or used during the life of the structure. The structure has been previously used as a boardinghouse and a single-family residence. Staff feels a bed and breakfast inn is not inconsistent with these uses and that the design of the home with many bedrooms and entrances is consistent with the use as a bed and breakfast inn.
- A written letter of recommendation must be submitted by the Historic Resources Commission.

The staff does propose that the following bed and breakfast standards for the RM8 district be applied as additional conditions:

- The owner/manager shall reside on the property.
- The maximum number of guest rooms provided by the bed and breakfast inn shall be eight.
- Passive recreation-related outdoor activities, such as tea-time, are allowed outside the principal structure or any accessory structures, but all other activities and functions designed to serve and entertain guests shall take place within the principal structure.
- The length of stay of guests shall not exceed 14 days.
- Signage shall be limited to a single sign, not to exceed eight square feet, with a maximum height of four feet. The sign may be located in the front yard and must be indirectly lit.
- Exterior lighting shall be residential in nature and shall not be directed towards adjacent properties.

- Activities and functions at the bed and breakfast inn shall be provided for overnight guests only and shall be limited to breakfast and an afternoon and/or evening refreshment. In addition to the functions for overnight guests, the bed and breakfast inn may have four social gatherings per year. No commercial activities other than providing lodging for registered guests shall be permitted.

This property meets the spacing requirement for bed and breakfast inns in residential districts that is found in the UDO.

While the property has a Woodlawn Avenue address it actually faces Elizabeth Place. Access to parking is off of Woodlawn Avenue. Six parking spaces (one handicapped) are proposed.

As this is a local landmark and located in the Montford Historic District, all improvements must be approved by the Historic Resources Commission of Asheville-Buncombe County.

At the October 3, 2011 meeting of the Technical Review Committee, this project was recommended to proceed to Council with the conditions as listed in the TRC report. She has received one call from a neighbor who inquired about parking and after being advised they had six spaces, expressed support.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c) of the UDO. Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and approved conditionally. The project must meet the technical standards set forth in the UDO, the City's Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The structure and improvements on the property are existing and no significant changes to the topography or natural features are proposed.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The ability to maintain this historic structure as a bed and breakfast inn, which is difficult to do as a single-family home, would likely assist in improving (not injuring) the values of adjoining or abutting properties. In the past the structure had been used as a boarding house.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The structure is an existing one and has been in existence since the mid-1800s. It is a local historic landmark and any improvements will have to receive a Certificate of Appropriateness from the Historic Resources ensuring that such improvements are in keeping with the historic district.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   This application supports the strategy found in the *Asheville City Plan 2025* which encourages promoting the adaptive reuse of the City's valuable commerical and residential historic districts.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The proposed development has been approved by the Technical Review Committee and was approved with conditions concerning all transportation, water, etc. provisions.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   Although the streets abutting this property are narrow, the use of this structure as a bed and breakfast inn is not expected to cause undue traffic congestion or create traffic hazards. Six off-street parking spaces are provided.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The ability to use this historic structure as a bed and breakfast inn should allow for the generation of additional income for the maintenance and preservation of the structure.
- The use of this structure, believed to be the oldest intact frame house in Asheville, as a bed and breakfast inn, would provide for greater public appreciation of a significant historic landmark.
- This application supports the strategy found in the Asheville City Plan 2025 which encourages promoting the adaptive reuse of the City's valuable commerical and residential historic districts.

Con: None noted.

Staff recommends approval of the Conditional Use Permit subject to the conditions listed in the TRC report, the standard conditions and the following additional conditions which apply to other bed and breakfast inns on residentially zoned properties:

- The owner/manager shall reside on the property.
- The maximum number of guest rooms provided by the bed and breakfast inn shall be eight.
- Passive recreation-related outdoor activities, such as tea-time, are allowed outside the principal structure or any accessory structures, but all other activities and functions designed to serve and entertain guests shall take place within the principal structure.
- The length of stay of guests shall not exceed 14 days.
- Signage shall be limited to a single sign, not to exceed eight square feet, with a maximum height of four feet. The sign may be located in the front yard and must be indirectly lit.
- Exterior lighting shall be residential in nature and shall not be directed towards adjacent properties.
- Activities and functions at the bed and breakfast inn shall be provided for overnight guests only and shall be limited to breakfast and an afternoon and/or evening refreshment. In addition to the functions for overnight guests, the bed

and breakfast inn may have four social gatherings per year. No commercial activities other than providing lodging for registered guests shall be permitted.

Mr. Fred Eggerton, owner of the house, said he bought the house when it was being condemned and began restoring it. He asked for Council's support for it to be used as a Bed & Breakfast Inn.

After rebuttal, Mayor Bellamy closed the public hearing at 7:56 p.m.

Councilman Russell moved for the adoption of Ordinance No. 4034, granting a conditional use permit for property located at 5 Woodlawn Avenue, to permit it to be used as a Bed & Breakfast Inn, subject to the conditions recommended by City staff, and subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; (6) The owner/manager shall reside on the property; (7) The maximum number of guest rooms provided by the bed and breakfast inn shall be eight; (8) Passive recreation-related outdoor activities, such as tea-time, are allowed outside the principal structure or any accessory structures, but all other activities and functions designed to serve and entertain guests shall take place within the principal structure; (9) The length of stay of guests shall not exceed 14 days; (10) Signage shall be limited to a single sign, not to exceed eight square feet, with a maximum height of four feet. The sign may be located in the front yard and must be indirectly lit; (11) Exterior lighting shall be residential in nature and shall not be directed towards adjacent properties; and (12) Activities and functions at the bed and breakfast inn shall be provided for overnight guests only and shall be limited to breakfast and an afternoon and/or evening refreshment. In addition to the functions for overnight guests, the bed and breakfast inn may have four social gatherings per year. No commercial activities other than providing lodging for registered guests shall be permitted. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 27 - PAGE 224**

**D. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING FOR ELECTROLUX, LOCATED AT 1310 FANNING BRIDGE ROAD, FROM INDUSTRIAL DISTRICT AND AIRPORT DISTRICT TO INDUSTRIAL DISTRICT/CONDITIONAL ZONING FOR A 304,000 SQUARE FOOT ADDITION TO AN EXISTING 400,000 SQUARE FOOT MANUFACTURING FACILITY, ALONG WITH A MODIFICATION REQUEST TO THE LOCATION OF SOME STREET TREES**

**ORDINANCE NO. 4035 - ORDINANCE TO CONDITIONALLY ZONE ELECTROLUX, LOCATED AT 1310 FANNING BRIDGE ROAD, FROM INDUSTRIAL DISTRICT AND AIRPORT DISTRICT TO INDUSTRIAL DISTRICT/CONDITIONAL ZONING FOR A 304,000 SQUARE FOOT ADDITION TO AN EXISTING 400,000 SQUARE FOOT MANUFACTURING FACILITY**

Urban Planner Julia Fields said that this is the consideration of an ordinance to conditionally zone Electrolux, located at 1310 Fanning Bridge Road to rezone from Industrial District and Airport District to Industrial District/Conditional Zoning for a 304,000 square foot

addition to an existing 400,000 square foot manufacturing facility. This public hearing was advertised on November 11 and 18, 2011.

Ms. Fields said that the applicant, Electrolux, currently has a warehouse/distribution facility located at 1310 Fanning Bridge Road in Asheville and is seeking conditional zoning approval to allow for a significant expansion and improved operations. The property is currently zoned Airport and Industrial and is owned by Minkles, LLC (existing operation) and the City of Asheville (currently under lease to the Airport Authority). It is proposed that the City-owned property will be leased (long term) or sold to Minkles, LLC, either of which would require FAA Approval (requested by the Airport Authority). The applicant is seeking rezoning to Industrial CZ (Conditional Zoning). The proposed expansion to the existing 400,000 square foot facility is for an additional 304,000 square feet.

The current facility has a single entrance for employee and truck traffic off of Fanning Bridge Road. The plans call for the demolition of the current parking and loading configuration and the creation of a new drive off of Airport Road for trucks entering a new loading dock area. The employee parking with continued access from Fanning Bridge Road will be reconstructed to provide for 260 spaces.

Due to the width of the rights-of-way of Airport and Fanning Bridge Roads, a modification would need to be granted to allow for some of the street trees to be located farther than 20 feet from the edge of the pavement.

The Technical Review Committee reviewed this proposal on October 17, 2011, and recommended approval with conditions. The applicant has submitted revised plans to staff addressing many of the issues in the report. At a meeting on November 2, 2011, the Asheville Planning and Zoning Commission considered this petition and unanimously (7-0) recommended it to you favorably. No one spoke at the meeting except representatives of Electrolux.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The applicant is expanding an existing building to provide for improved function at their facility. The existing building has been in operation for many years now and is in a location with immediate access to major transportation corridors. It is surrounded by other major traffic generating uses.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   There will be loss of some of the existing wooded areas to the north and east of the proposed expansion due to needed grading; however, significant building impact and other landscaping will be planted as part of the project.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The use of the land is not changing; the operation is expanding to facilitate improved processes. The property is surrounded by other major traffic generating uses.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The development is in an area with other very substantial buildings and operations.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The proposed development supports the depiction in the City's comprehensive plan of the Asheville Regional Airport area as a regional node. It also supports the strategy of having Asheville's planning and zoning processes facilitate sustained and positive economic development. It supports the Council goal of supporting a strong local economy by continuing to implement sustainable growth and development.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   There are no additional truck loading docks proposed in the expansion. The development is located just off of a major interstate highway and along a four lane state highway. The project has received approval from the City's Technical Review Committee concerning issues of water, fire, and police protection.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   Although this is a major expansion, the intensity of the use will change little from existing operations.

Pros:

- Expansion of an existing major distribution facility supports many City goals concerning economic development.
- Provides for an improved traffic pattern for both employee and truck traffic.

Con: None noted

Staff recommends approval of this request subject to the conditions noted in the TRC report and with the landscape modification requested. At a meeting on November 2, 2011, the Asheville Planning and Zoning Commission considered this petition and unanimously (7-0) recommended it to you favorably. No one spoke at the meeting except representatives of Electrolux.

Mayor Bellamy opened the public hearing at 8:01 p.m.

Mr. Dennis Justice spoke in support of the conditional zoning.

Mayor Bellamy closed the public hearing at 8:03 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Mayor Bellamy said that this is a non-aviation use of City-owned property and she didn't feel like the Airport Authority should benefit from our property. Any revenue stream produced from this potential lease or sale should come back to the City. She felt that the City should be at the table when those discussions are going forward.

Councilman Russell moved for the adoption of Ordinance No. 4035, to conditionally zone Electrolux, located at 1310 Fanning Bridge Road to rezone from Industrial District and Airport District to Industrial District/Conditional Zoning for a 304,000 square foot addition to an existing 400,000 square foot manufacturing facility, with the landscape modification, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) The issue of ownership or long-term lease of the property must be completed prior to any permit being issued. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 229**

**C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS THE AVENTINE, LOCATED AT LONG SHOALS ROAD AND CLAYTON ROAD FOR A 312 APARTMENT COMPLEX**

**ORDINANCE NO. 4036 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS THE AVENTINE, LOCATED AT LONG SHOALS ROAD AND CLAYTON ROAD FOR A 312 APARTMENT COMPLEX**

Deputy City Clerk Kleisler administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast explained that this process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

City Attorney Oast asked if any Council member has any special knowledge associated with this project that they disclose it at this time.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 8:08 p.m.

Urban Planner Nate Pennington submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pennington said that this is the consideration of the issuance of a conditional use permit for property located at Long Shoals Road and Clayton Road.

The subject property consists of one parcel comprising 61.74 acres according to Buncombe County tax records and is located in the City's extra-territorial jurisdiction (ETJ). The property is located along Long Shoals Road, Clayton Road and the French Broad River in south Asheville in the vicinity of the I-26 interchange, although without any immediate proximity to the current city limits which terminate at the French Broad River. If approved, the subject property would be subdivided into four (4) tracts and the project would be built entirely on tract 3. Tract three is proposed to be 35.86 acres and would be developed at a total density of 8.7 dwelling units per acre. There are currently no plans for the development of the remaining parcels. The maximum density permitted in the CI zoning district is 16 units per acre.

The following list provides a breakdown of the proposed development:

- 7 apartment buildings would house the 312 apartment units
- 3 – 4 story configurations
- 152 – one bedroom units
- 115 – two bedroom units
- 45 – three bedroom units
- Clubhouse, leasing area, pool/cabana area, restrooms, mail kiosk located in vicinity of building #7
- 3 freestanding garage buildings located throughout the site and a maintenance/garage/car wash structure located in the vicinity of building #6

The site is heavily wooded with the exception of a large Progress Energy transmission line that splits the property in a northwest direction almost parallel to Clayton Road. Old soil roadbeds are located throughout the site. The property contains documented wetland areas, a stream, tributaries and regulated floodplain along the French Broad River.

The apartment project is proposed to be built in one phase with subsequent development of outparcels to occur in the future. Flournoy Development Company would retain ownership of tract 3 containing the apartments while the remaining outparcels would remain (for now) in the ownership of Biltmore Farms Inc.

Access to the site is proposed to be provided from both Long Shoals Road and Clayton Road via a series of meandering driveways that weave through the site.

According to the site plan, 490 parking spaces are provided. This amount of parking is well within the minimum/maximum parking threshold and is inclusive of required ADA spaces. 26 bicycle parking spaces are provided and this number is in compliance of the required 5% bicycle parking standard. Parking is dispersed throughout the site – located behind building #'s 1 – 6 and in the front and rear of building #7.

The site is heavily wooded and large areas of the property will remain as such in order to meet open space and tree save standards. Street trees will be required along the entire frontage of Long Shoals Road and Clayton Road. Building impact and retaining wall landscaping are dispersed throughout the site. Parking lot landscaping has been provided in applicable areas and no modification requests to landscaping standards are being sought.

The open space requirement for this type of development is 15% of the total site size; a total of 5.38 acres for this site. The site plan illustrates that more than adequate open space has been reserved to meet this requirement.

Sidewalk construction (or fee-in-lieu) is required along all street frontages along Long Shoals Road and Clayton Road. The City traffic engineer has indicated that a fee-in-lieu of option might be more ideal (future sidewalk maintenance issues) given the fact that this project is located in ETJ.

Large scale developments are required to provide an urban level of service to meet the needs of their residential and/or commercial tenants. While staff recommended that the applicant consider voluntary annexation to meet these needs, the applicant has elected to contract for services both privately (solid waste/recycling, etc.) and with Buncombe County (police and fire protection).

This proposal was recommended for approval with conditions by the Technical Review Committee on October 17, 2011.

At their regularly scheduled meeting on November 2, 2011, the Planning and Zoning Commission considered this project. The Commission heard from three members of the community with issues related to future commercial development on the proposed outparcels and appropriate development of the property in accordance with City goals and policies specifically related to sustainability and affordable housing.

After hearing from the public, the Commission discussed the project. Some members had concerns because the project offers no affordable housing, does not commit to a minimal standard of "green building" techniques (i.e. Energy Star Certification) and has a purely auto-oriented design. Other members appreciated the level of density the project proposes as well as the overall preservation of open space and vegetation; noting the difficulties associated with developing the site.

The Commission ultimately recommended approval of the project on a 6 to 1 vote; but also recommended the developer further consider City adopted goals and policies before City Council for review.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The subject property is appropriately zoned for the proposed residential development. The development was designed to preserve the existing riparian buffer along the French Broad River and development is being clustered outside of the regulated floodplain. The

development is fairly isolated from Long Shoals Road and Clayton Road and is bounded by a large electrical transmission line and the French Broad River. The only immediate neighbor is Biltmore Baptist Church to the north and is separated from the church by a very large parking lot.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
As noted in Finding #2, the proposed development is compatible with surrounding uses and adjacent transportation corridors.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
As noted in Finding #2, the development is setback from adjacent road frontages and is located in the vicinity of a very large church. The development is clustered in a way that keeps it isolated from residential development across Long Shoals Road. The proposed density is almost one-half of the permitted residential density for the CI zoning district.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
Elements of the proposal are only partially aligned with the City's goals and objectives for "Green and Sustainable," but not for "Affordable" as noted in the Compliance with Comprehensive Plan and other Adopted Plans section. The most notable missing element, given past expectations from the Council, is that a project of this magnitude (312 residential units) provides no affordable units.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The property is located along Long Shoals Road, Clayton Road and the French Broad River in south Asheville in the vicinity of the I-26 interchange. The nearest bus stop is approximately two miles from the subject site along Hendersonville Road. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
A traffic impact study has determined that the proposed use will not cause undue traffic congestion or create a traffic hazard along the existing street infra-structure. The existing street infra-structure, which was recently upgraded, is sufficient to handle the additional traffic from the proposed use. The location of the access points must provide adequate intersection and stopping sight distances required by NCDOT and/or City policies and guidelines. Since both access points are along state-maintained streets, the North Carolina Department of Transportation has final approval of the appropriate driveway permits.

Based on the above findings and the analysis provided in the report, staff finds this request, with conditions noted, to be reasonable.

Pros:
- Higher density development furthers the goals and objectives of the comprehensive plan.
- Clustered development provides for the preservation of dense vegetation along the French Broad River.

Cons:

500

- Applicant does not propose to reserve any units for affordable housing.
- Dense development is not in the vicinity of public transportation and will be fully auto dependent.
- At the Planning & Zoning Commission meeting, the representative for this Georgia based developer stated that they employ their own construction workers and management staff thereby limiting hiring of local construction workers.

Staff recommends that the City Council approve this request, with a few areas of concern. While the application meets the technical requirements of the underlying zoning district and other UDO standards, and it complies to a certain extent with goals for added density and green building standards, and the market rate housing it proposes generally meets current levels of affordability for "workforce" level housing; this project offers no affordable housing. We therefore believe that it falls short of compliance with that long range policy objective that has been preferred by the City Council in recent years.

Mr. Lou Bissette, attorney representing Flournoy Development, said the project is comprised of 312 units for a total capital investment of approximately $20 Million. The property consists of approximately 36 acres in the City's extra-territorial jurisdiction. The maximum density is 16 units per acre and this development is only 8.7 dwelling units per acre, which they believe is sustainable. Project includes 490 parking spaces, 26 bicycle parking spaces, parking is disbursed throughout the site, and the open space requirement is much more than required. He reminded the Council that it was recommended by the Planning & Zoning Commission and the Technical Review Committee, noting there are no variances requested. He asked that all of the information provided to the Planning Department be included in the record (Applicant Exhibit 1). He explained how all seven standards have been met as proposed in the site plan. He said all 312 residential units will rent for well below the City's workforce housing maximum rates, e.g., Asheville's workforce housing rate for a 1-bedroom is $1,063 and their unit will begin at $825. That is similar for the 2 and 3 bedrooms as well. They felt that this location, which is 10 miles from the City center in a semi-rural area outside of the City with no public transit, lends itself more to workforce housing than to the affordable housing units. The need in the area is for workforce housing. The Aventine is also committed to green and sustainable construction and in addition to the density and the buffering requirements will meet several components of Energy Star Version 2.5. The Energy Star based proposals, along with other green building techniques, including the installation of 2 electric car charging stations and a set-aside of a bus shelter space for future use, are also aligned with the City's goals for green and sustainable housing. Although the nearest bus stop is approximately 2 miles from the project site along Hendersonville Road, the site has adequate access, water supply, fire and police protection, waste disposal and similar facilities. Mr. Bissette noted an error in the staff report which said that the developer was going to bring all of the construction forces here from Georgia. That is not the case. They have their own contracting firm but workers and the trades people will be bid out here. He requested Council's approval of the project, subject to the conditions by staff.

Mr. Paul Szurek, representing the owner of the property Biltmore Farms, request Council's approval of the permit. He explained how they need more workforce housing in south Asheville. Workforce housing needs to be nearby Biltmore Park so it can offer a low commute, low carbon lifestyle. We are fortunate to have a ready built project financed that will meet the needs for workforce housing and raise property values in this area.

Mr. Timothy Sadler supported the project and suggested solar panels to make them financially sustainable for the people who live in the apartments.

After rebuttal, Mayor Bellamy closed the public hearing at 8:25 p.m.

Councilman Bothwell felt that since there were so many jobs across the highway in Biltmore Park it would be nice for those people to have a sidewalk connection so they could walk to work.

Mr. Will Buie, Civil Engineer, responded to Councilwoman Manheimer by describing the proposed retaining walls. The walls will be as high as 40 feet; however, the walls will be terraced – 20 foot wall, terrace and then another 20 foot wall. Their goal will be to preserve the adjacent vegetation, in addition to the additional landscaping required.

Councilman Smith was curious of whether anyone would be able to see the high retaining walls from the river. Mr. Buie responded that it's hard to tell what you would see from the river; however, at the closest point there is a 55-ft buffer between the river and the retaining wall.

Upon inquiry of Councilman Smith, Mr. Buie explained how they will work with the City on erosion control measures. Councilman Smith felt 55 feet is not a lot of room to catch water.

Councilman Russell moved for the adoption of Ordinance No. 4036 to approve the Level III site plan for the project identified as The Aventine, located at Long Shoals Road and Clayton Road, for a 312 unit apartment complex, subject to the following conditions (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) A minor subdivision application must be submitted for the creation of the outparcel lots before zoning permit issuance. This motion was seconded by Councilman Davis.

When Councilman Smith asked if the buildings themselves would be Energy Star certified, Mr. Buie said the owner elected to pursue the Energy Star 2.5 project. He said they will meet the components of Energy Star certification, however they will not go through the certification or inspection process as they cost double of what the actual infrastructure will cost to install. It is their preference to put those dollars into the actual buildings rather than into certification.

When Councilman Smith asked if the owners are open to adding a percentage of affordability, Mr. Ryan Foster, Vice-President of Flournoy Development Company, said that with the financing they currently have in place they are not sure they would get approval with an affordability component. Restricting rents and incomes will increase cost and will hinder the financial feasibility of the project. The approval they have is based on rents currently in the pro forma. They prefer to stay with workforce than an affordable housing component, noting their rents are lower than workforce housing.

When Councilman Smith asked if Mr. Foster has asked his financial partners about. adding an affordable housing component, Mr. Foster replied that he hadn't because they have already run the financial feasibility of the project and felt they would not even consider it. They felt fortunate to have an equity partner who is committed to the project as it is.

Councilman Smith said that since this is Phase 1 of 4 phases, he was curious about the future phases if we can expect the future phases also not to rise to these same City goals.

Mr. Szurek said the remaining phases will be commercial development. There is a possibility for one of the parcels to be some kind of senior housing. With respect to the very valid goals of affordable housing, those are really community goals and at some point he questioned whether it's valid to impose them on individual members of the community as opposed to the

broader community. Mr. Foster is correct in that if you change the pro forma and constrain rents you will risk the project not being developed.

Vice-Mayor Newman understood that Council needs to base their decision on whether the seven conditional standards have been met. With that understanding, he asked if the developer or property owner would be willing to consider voluntarily annexing the property into the City of Asheville at some point. He explained that if this is a $20 Million investment, it will reduce the City's share of sales taxes generated in Buncombe County by that amount. The City has done some creative things with development partners in the past about plans to come into the city.

Mr. Bissette said that at the Planning & Zoning Commission meeting it was mentioned and they have agreed to provide an urban level of service. He knew a number of projects have voluntarily annexed into the City, but those received some help or incentives from the City for coming in. This project has asked for no variances or special incentives of any kind.

Mr. Buie said the developers are open to that idea, outside of the bounds of this permit. There is a significant cost that they and Biltmore Farms will incur to extend utilities to the site, specifically sewer. There are other significant costs that go along with this. If there can be a discussion outside of the bounds of this that can make that pro forma work, he felt that is something they would consider. At this time, they don't know what that would be. He would be concerned about postponing this permit because their investor would need some certainty that things were moving forward with the project. They have a goal of breaking ground in April. He asked for Council to consider the permit at this meeting, but felt the developers would have a valid and honest conversation about this as we proceed forward with the project.

City Attorney Oast cautioned Council to not consider the response to the annexation question in making their decision.

Councilman Smith appreciated the efforts being made to build during these economic times. He was pleased the developers have made changes, specifically around the Energy Star pieces. He would not be able to support this project due to the lack of affordability. He also had concerns about the height and impact of the retaining walls on the river, as well as some of the stormwater components.

The motion made by Councilman Russell, and seconded by Councilman Davis carried on a 4-3 vote, with Vice-Mayor Newman, Councilman Bothwell and Councilman Smith voting "no."

City Attorney Oast said that because the ordinance was not adopted by a 2/3 vote of Council, it would be necessary to bring the ordinance back for a second and final reading at the next Council meeting.

City Attorney Oast said that because there will be a new seated Council at the next formal meeting, Council Members Elect Hunt and Pelly (both of who were in the audience) can review the record and be allowed to vote on the second and final reading.

Councilman Russell pointed out this project is in the extra-territorial jurisdiction area and the residents will not be City residents.

Councilman Smith said that he is still open to supporting the project if he can learn more about what will happen at the river and if his concerns around affordability can be addressed.

**ORDINANCE BOOK NO. 27 - PAGE 233**

**V. UNFINISHED BUSINESS:**

## A. SPECIAL WATER RATE FOR WATER CONSUMPTION GREATER THAN 1,000 CCF PER MONTH BY LOCAL MANUFACTURES

Director of Water Resources Steve Shoaf said that this is the consideration of a special water rate for water consumption greater than 1,000 CCF per month by local manufacturers.

The cost of water service continues to increase based on the costs of energy, materials, chemicals, maintenance, personnel and capital improvements. Water treatment, system operation and capital costs are influenced by a global market, and we compete with other sectors for energy, materials, goods, and services.

The water rate study conducted by Raftelis Financial Consultants, Inc. in 2010 – 2011 indicated inequities between customer classes in the water rate structure. To be fair to residential customers who are currently subsidizing the other water customers, the study pointed to a need to adjust multi-family, small commercial, and large commercial water rates to a more equitable position.

Multi-family and small commercial water rates were adjusted to 85% of the residential rate beginning in Fiscal Year 2012. Small commercial water consumption is defined as consumption of less than 1,000 CCF per month. These were fairly minor adjustments and future increases will track the necessary increases in residential rates.

Large commercial water use (consumption after the first 1,000 CCF per month or 748,000 gallons per month) has traditionally been steeply discounted. In Fiscal Year 2011, the water rate for large commercial consumption ($1.41 / CCF) was 37% of the residential water rate ($3.77 / CCF). The consultants performing the water rate study could not justify the heavy discount based on the cost of service. Their recommendation is to raise the large commercial water rate over 5 years to 70% of the residential water rate. At that point, future increases will trend with the necessary increases in residential rates.

Over the next five (5) fiscal years, Water Resources is projecting that water rates for large commercial consumption will increase at an accelerated pace to narrow the gap between the residential and large commercial categories.

A survey was provided to 5 of the 6 manufacturers that would be impacted by this rate adjustment. The sixth manufacturer did not respond to voice mail messages requesting participation in the survey. Four of the 6 participated in discussions about the rate increase and two responded to the survey in writing after discussions with the Water Resources Department.

Survey Results: The four manufacturers indicated through discussion that they were not in favor of a rate increase, but all four did acknowledge that water rate increases are "inevitable". Two manufacturers stated that water rate increases could affect where expansions in production might occur in the future. They are part of corporations with multiple locations and those decisions would be made at the corporate level. One manufacturer cited competition with similar businesses in other locations within the region as the need to control the proposed water rate increases. Another manufacturer stated that increased costs would impact employee hiring, training, and advancement. When discussing alternatives, one respondent pointed to the model used by MSD to spread out the increases over a longer time period. The MSD plan is to bring all sewer users to a single rate at the end of this program.

This study is part of City Council's strategic plan to improve job growth and community development by providing support to local businesses.

Pros:

- Approval of a special, 10-year manufacturing rate schedule will allow local manufacturers to manage their budgets and control operating costs.

- The City Council will be able to establish policy related to the water rates and local manufacturers.
- Approval of a special, 5-year manufacturing rate schedule (as opposed to a 10-year schedule) will reduce the gap between residential and commercial rate payers.

Cons:

- Establishing a special manufacturing rate will continue to extend the disparity between residential and commercial water rates.
- Establishing a special manufacturing rate will decrease revenue from customers in this class.

The following chart represents the proposed water rates (per CCF) for consumption greater than 1,000 CCF per month.

| | FY 10/11 | FY 11/12 | FY 12/13 | FY 13/14 | FY 14/15 | FY15/16 | FY 16-17 |
|---|---|---|---|---|---|---|---|
| 5-Year | $1.41 | $1.69 | $1.85 | $2.22 | $2.63 | $3.03 | $3.06 |
| 10-Year | $1.41 | $1.69 | $1.86 | $2.05 | $2.23 | $2.43 | $2.65 |

The greatest impact will be on the largest commercial users because they will be using more water over the 1,000 CCF per month threshold. The 5-year rate schedule would mean an increase in expenditures for water at the end of five years ranging from 40% to 72% depending on the volume of water used. For the six manufacturers, creating a 10-year schedule for increasing the large user rate will result in $250,000 savings or a similar decrease in revenue for the Water Resources Department over the next five years. If the 5-year schedule was maintained, Water Resources would propose keeping the capital improvement fee fixed for 3-inch and larger meters for FY 12/13. All other rates and fees would increase as outlined in the Raftelis rate study.

City staff is asking City Council for policy direction about an approach for rate setting as it relates to the six manufacturers.

Vice-Mayor Newman felt that commercial rates do need to be brought into closer to residential rates. He continued to believe that the manufacturing sector of the economy is uniquely vulnerable. He felt it makes sense, as part of our community's economic development strategy, to use this resource to preserve those vulnerable manufacturing operations. Even though he understood that rates will need to go up, but there are still dramatic increases over the 10-year period. He was in favor of a more gradual approach.

Councilman Bothwell felt we have a tremendous resource in our water and in this water-short world, any water intense business that chose to move away from our great water source will hurt themselves in the long run. He felt that raising the rates to a fair rate now and quickly makes more sense than stretching it out, especially since the residents are subsidizing businesses now. He would support the 5-year rate schedule.

Mayor Bellamy felt this needed further discussion the new Council. She asked for consideration of (1) scheduling our implementation of rate increases at the beginning of the year (opposed to the middle of the year) as most businesses have completed their budgets by the time we ask for a rate increase on July 1; and (2) voting one year in advance on our rate increases so businesses can anticipate increases in their budgets.

Councilman Smith agreed there needed to be further discussion on this issue. He also suggested further discussion with manufacturers to determine how they are going to be able to help support the water system that they depend on while at the same time we are meeting the needs without unfairly burdening the residential water users.

Councilman Davis liked the 10-year rate schedule model as it gives companies the opportunity to budget for increases.

Councilman Smith said that the Finance Committee has been discussing this issue since 2007 and liked the 10-year rate schedule model. He then moved to create a new class for the 10-year pricing program. This motion was seconded by Councilman Davis.

City Manager Jackson said that rates need to be in an ordinance format and we have not given any public notice, nor provided Council with pros and cons, or a fiscal impact statement. This is information only for Council showing a study with equity models. He understands that more discussion is necessary on this topic and that the newly formed Finance Committee will be reviewing this. Therefore, Councilman Russell moved to withdraw his motion.

It was the consensus of Council to have the newly formed Finance Committee review this issue.

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 11-228 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE NAMING RIGHTS AGREEMENT WITH U.S. CELLULAR CORPORATION FOR THE SPONSORSHIP OF THE ASHEVILLE CIVIC CENTER**

**RESOLUTION NO. 11-229 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CHANGE ORDERS WITH BRANTLEY CONSTRUCTION COMPANY, GENERAL CONTRACTOR; IRWIN TELESCOPIC SEATING, SEATING RISER CONTRACTOR; CAPTURION NETWORK, SCOREBOARDS/VIDEO BOARDS; AND SPL INTEGRATED SOLUTIONS, SOUND REINFORCEMENT SYSTEM, FOR THE PURPOSE OF COMPLETING RENOVATIONS OF THE ASHEVILLE CIVIC CENTER**

**RESOLUTION NO. 11-230 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE PROFESSIONAL SERVICES WITH BETSCH ASSOCIATES/PBC+L FOR ADDITIONAL SCOPE OF DESIGN SERVICES FOR THE ASHEVILLE CIVIC CENTER RENOVATIONS**

**ORDINANCE NO. 4037 - BUDGET AMENDMENT TO INCREASE THE CIVIC CENTER RENOVATIONS PROJECT BUDGET WITH REVENUE COMING FROM OUTSIDE FUNDING PARTNERS AND CIVIC CENTER FUND BALANCE**

Economic Development/Civic Center Director Sam Powers said that this is the consideration of a resolution authorizing the Mayor to execute a License Agreement with U.S. Cellular Corporation for naming rights of the Asheville Civic Center complex city-owned property at 87 Haywood Street, Asheville, NC.

The Asheville Civic Center was constructed in the mid-1970s to serve as the major events and entertainment venue for Asheville and Western North Carolina. There have been numerous Civic Center studies over the past ten years; all had a common theme that major capital improvements are required to keep the facility viable as a major destination and economic development tool. Over the past 18 months, the facility has made tremendous strides to undertake major renovations to the facility. The City and several partner organizations led a successful bid to regain the Southern Conference Basketball Tournament, which has a significant tourism spending and Hotel Occupancy Tax generation impact. This success has served as a

catalyst to leverage significant funding of $2 million from the TDA Product Development Grant fund, $1 million from Buncombe County, plus current Civic Center CIP funds of $1.3 million.

One of the key goals of the renovation process has been to seek additional partnerships, including private sector financial participation in the project, as a way to increase upfront equity and on-going assistance with capital improvements. Naming rights for event facilities has developed as a best-practice to enhance funding for the venues.

In the past, former civic center directors and city leaders have had discussions with local and regional companies to inquire about possible naming rights interest in the Asheville Civic Center. No companies were interested in either component parts or venue naming rights. After the announcement of the major renovation project and the renewed community partnerships that enabled the project, the city economic development director was contacted by U.S. Cellular Corporation with an expressed interest in naming rights for the venue. U.S. Cellular has been active in these public-private partnerships, including naming rights for the Chicago White-Sox Park, as well as the U.S. Cellular Arena in Milwaukee, Wisconsin, the U.S. Cellular Center in Cedar Rapids, Iowa, the U.S. Cellular Community Park in Medford, Oregon and the U.S. Cellular Coliseum in Bloomington, Illinois.

City staff researched other naming rights agreements in the public domain, and learned that there is a wide variation in the amounts of funding in naming rights agreements. New venue construction garnered substantially more naming rights fees. Major metropolitan media markets, professional sports facilities, and long term commitments were financially more substantial. Existing facilities, especially older facilities, generated less interest and financial commitment.

As a result of the consistent, long-term lack of interest from local or regional companies in any naming rights for the civic center, coupled with a proactive interest from a financially strong, nationally prominent technology-based company that has the ability to help with social media and market development for the venue, staff began negotiations with U.S. Cellular and reached an agreement in terms for a 5 year licensing agreement with a possible three year extension.

Other key components of the licensing agreement are: U.S. Cellular will receive Exterior Façade signage facing I-240, a Marquee Sign facing Haywood Street; Highway Directional signage/local way finding signage; Interior Signage/logo inclusion on marketing material, tickets; 2500 square feet of space for product displays; Event space on an annual basis. Additionally the agreement allows ExploreAsheville.com Arena, Banquet Hall, Museum, Exhibit Hall, Auditorium and Vendors (Soft Drink, Beer, Food, etc.) as continued and future sponsorship opportunities for the facility

The Notice of Intent to enter into a License Agreement with U.S. Cellular Corporation was published on November 11, 2011, in the Asheville Citizen-Times, in accordance with G.S. 160A-272.

This action complies with multiple City Council Strategic Operating Plan Objectives. The action supports current and prior Strategic Operating Plan Goals: Fiscal Responsibility, by leveraging internal and external partnerships for pursuing capital improvement projects and infrastructure projects; Green and Sustainable, by taking the City's sustainability program to the next level, which will include HVAC improvements to the Banquet Hall, increased recycling, and energy efficient lighting improvements; and the Job Growth and Community Development Focus Area, by creating more collaborative and effective working partnerships between the City of Asheville, the business community, and other key organizations to effectively manage the City's regulatory environment while accomplishing economic development goals.

The action also complies with the Civic Center Commission's Strategic Plan, as well as recommendations of the 2006 Civic Center Task Force. The action supports the Downtown

Master Plan, which calls for a near-term action step to maintain and upgrade the existing Civic Center and Thomas Wolfe Auditorium to serve for at least the next five to ten years.

Pros:

- Utilize initial funding for support of current facility upgrades and continue discussions with key partners including County/TDA, while leveraging additional funding using private money as incentive.
- Plan for additional upgrades to facility, enhancing chances for additional events, etc
- Marketing and promotional assistance from U.S. Cellular.
- Reserves key venue components for other naming rights and sponsorship opportunities.

Con:

- None noted.

The agreement has a positive financial impact on the Civic Center for continuing capital improvements: a license agreement of $750,000 over a five year period, plus $60,000 in capital cost-sharing, totaling $810,000; a five percent attendance incentive/deduction over four years totaling an additional $32,000; and an additional three year license agreement extension that would increase the amount another $511,310 for a total of approximately $1,350,000 over eight years. A budget amendment to accept these funds is included in a separate staff report to include the funding in the Civic Center capital budget.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute a License Agreement with U.S. Cellular Corporation for naming rights of the Asheville Civic Center complex city-owned property at 87 Haywood Street, Asheville, NC.

Regarding the change orders, amendment to a contract and budget amendment, Mr. Powers said that this is the consideration of (1) a resolution authorizing the City Manager to execute change orders with Brantley Construction Company, General Contractor (contract amount: $4,077,921.00); Irwin Telescopic Seating, Seating riser contractor (contract amount: $775,746.00); Capturion Network, scoreboards/video boards (contract amount: $254,715.00); and SPL Integrated Solutions, Sound reinforcement system (contract amount: $418,461.03); up to the budgeted contingency of $400,000 for the purpose of completing the current Civic Center renovations; (2) a resolution to authorize the City Manager to execute an amendment to the professional services contract with Betsch Associates/PBC+L for design services related to the Civic Center renovations in the amount of $295,720 for a total contract amount not to exceed $825,705 for Phase II of the project; and (3) a budget amendment in the amount of $357,000 to increase the Civic Center renovations project budget with revenue coming from outside funding partners and Civic Center fund balance.

City Council previously approved various contracts to renovate the Civic Center for the Southern Conference Basketball Tournament coming March 2012. These contracts include a general contractor as well as specialized contractors for the sound system, seating risers, and scoreboard/electronics. Staff is requesting that Council authorize the City Manager to execute change orders for these contracts up to the budgeted amount of $400,000 in order to complete the project in time for the Southern Conference Basketball Tournament.

A standard procedure in construction contracts would authorize a contingency to cover potential routine project change order requests for unforeseen construction components related to the overall renovation of the arena, locker rooms, concourse, banquet hall, museum area and concessions areas, sound system, scoreboard, and seating risers. Due to an oversight in preparation of the staff report, staff did not request the approval for authorization of the construction contract contingency and authorization for the City Manager to execute the change orders.

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Staff has been pleased with the progress of the work to date, and the project is currently on schedule for completion in accordance with the plans and specifications within the time specified in the contract. There are currently only approximately $97,264 in pending change directives and change orders necessary to insure that the project is completed.

While staff does not expect the changes to be in the amount of $400,000, there are some unknown factors that could increase the original contracts. Given the time constraints on the project, staff is requesting the ability to expedite the process by asking City Council to approve these changes.

Approval of the resolution authorizing the City Manager to execute change orders with the contractors up to $400,000 and the resolution increasing the contract with Betsch Associates/PBC+L by $295,720 also requires approval of a project budget amendment. There is available budget already in the Civic Center renovation project to cover a portion of these additional amounts; however the project budget needs to be increased by $357,000 to fully fund them. Revenue to cover the $357,000 budget amendment is coming from three sources: (1) US Cellular first year funding, (2) ABC contribution, and (3) Civic Center fund balance. This budget amendment will bring the total project budget for Civic Center renovations to $7,332,000. The chart below shows the original budget for this project, the August budget amendment, and the proposed budget amendment before Council tonight.

| FY 2012 CIVIC CENTER PROJECT BUDGET | | |
|---|---|---|
| **ORIGINAL BUDGET** | | |
| **Funding Sources** | | **Amount** |
| Tourism Development Authority | $ | 1,750,000 |
| Buncombe County | $ | 320,000 |
| City of Asheville Capital Contributions | $ | 800,000 |
| **Total Original Budget** | **$** | **2,870,000** |
| **AUGUST BUDGET AMENDMENT** | | |
| **Funding Sources** | | **Amount** |
| Civic Center Box Office Proceeds | $ | 580,000 |
| Debt Proceeds | $ | 3,525,000 |
| **Total Budget Amendment Aug** | **$** | **4,105,000** |
| **TOTAL BUDGET AUGUST** | **$** | **6,975,000** |
| **NOVEMBER BUDGET AMENDMENT** | | |
| **Funding Sources** | | **Amount** |
| US Cellular | $ | 132,000 |
| Civic Center Fund Balance Transfer | $ | 200,000 |
| ABC | $ | 25,000 |
| **Total Budget Amendment Nov** | **$** | **357,000** |
| **TOTAL BUDGET NOVEMBER** | **$** | **7,332,000** |

| **Funding Uses/Project Components** | | **Amount** |
|---|---|---|
| Design | $ | 825,705 |
| Seating Replacement | $ | 775,000 |
| Scoreboard Replacement | $ | 255,000 |
| Sound System | $ | 418,461 |
| Technology Upgrades and Asbestos Abatement | $ | 120,000 |
| Construction | $ | 4,077,921 |
| Chairs and other equipment | $ | 459,913 |
| Contingency | $ | 400,000 |

| TOTAL | $ | 7,332,000 |
|---|---|---|

This action complies with the City Council Strategic Operating Plan's Fiscal Responsibility goal of developing strategic partnerships to leverage resources for infrastructure and CIP projects. This action also complies with the Civic Center Commission Master Plan that encourages continuing renovations for the facility, and supports the goal of developing new partnerships. This request supports Council's strategic plan allowing for timely renovations to the Civic Center for the Southern Conference.

This action has been reviewed and recommended by the Civic Center Commission.

Pros:

- Allows for timely renovations to the Civic Center for the Southern Conference Basketball Tournament.
- Assures that the project will stay within budget as the change orders cannot exceed the budget of $400,000.

Con:

- None.

The budget amendment will increase the total Civic Center renovation project budget by $357,000. $157,000 of this amount will come from outside project partners with the remaining coming from Civic Center fund balance. As reported in the FY 2010-11 audit presentation, Civic Center June 30, 2011 fund balance exceeded its 16% target amount by $394,296. Staff is recommending that $200,000 be appropriated from fund balance for the renovation project. The remaining $194,296 will be held in fund balance to meet cash requirements at the Civic Center box office. This Civic Center fund balance appropriation has no impact on General Fund fund balance.

Staff recommends City Council authorize (1) a resolution authorizing the City Manager to execute change orders with Brantley Construction Company, General Contractor (contract amount: $4,077,921.00); Irwin Telescopic Seating, Seating riser contractor (contract amount $775,746.00); Capturion Network, scoreboards/video boards (contract amount: $254,715.00); and SPL Integrated Solutions, Sound reinforcement system (contract amount: $418,461.03); up to the budgeted contingency of $400,000 for the purpose of completing the current Civic Center renovations; (2) a resolution to authorize the City Manager to execute an amendment to the professional services contract with Betsch Associates/PBC+L for design services related to the Civic Center renovations in the amount of $295,720 for a total contract amount not to exceed $825,705 for Phase II of the project; and (3) a budget amendment in the amount of $357,000 to increase the Civic Center renovations project budget with revenue coming from outside funding partners and Civic Center fund balance.

Regarding the naming rights, Mr. Powers said that everyone can agree that our Civic Center is an important economic development engine for Asheville. Our Downtown Master Plan recently reiterated that it is an important anchor for downtown. It is exciting to see passion and interest in the Civic Center. It builds on an overwhelming positive momentum that has been built by working together with numerous partners in the last 24 months, after years of frustration about how to bring new life and required capital improvements to the complex. City Council has specifically included the Civic Center as a City-wise priority in its strategic plans since at least 2007. He citied the following:

- Asheville City Council's goals and vision 2007-08 (1) Support a renovated Civic Center as a regional entertainment destination; pursue initiative to improve the customer experience at the Civic Center.

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- Asheville City Council 2008-09 Strategic Plan (1) Support a sustainable community and a sustainable city government through a strong commitment to infrastructure maintenance, capital improvements, long-term planning and fiscal responsibility; (2) Develop a long-term plan to address the City's aging infrastructure including facilities and sidewalks; and (3) Take action, including addressing capital needs, to improve the customer service experience at the Asheville Civic Center.

- Asheville City Council 2009-10 Strategic Plan (1) Support a strong commitment to infrastructure maintenance, capital improvements, long-term planning and fiscal responsibility; (2) Develop a long-term plan to address the City's aging infrastructure including facilities and sidewalks; and (3) Take action, including addressing capital needs, to improve the customer service experience at the Asheville Civic Center.

- City of Asheville Strategic Plan 2010-11 (1) Explore alternatives for enhancing the City's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities; and (2) Leverage internal and external partnerships for pursuing capital improvements and infrastructure projects.

- City of Asheville Strategic Plan 2011-12 (1) Leverage internal and external partnerships for pursuing capital improvements and infrastructure projects; and (2) Consider funding for Asheville Civic Center improvements by building on momentum with existing partners.

Much of the decision to specifically focus on the Civic Center in the Strategic Plan is due to the many studies and reports over the last 15 years devoted to the future of the Civic Center. He briefly reviewed some of the following key studies and their recommendations: (1) 1996-98 – Hunter Interest Report; (2) 2000 – Highland Group Report; (3) 2001 – Heery Study; (4) 2002-03 – Performing Arts Center Study by Westlake, Reed & Leskosky; (5) 2005-06 – Civic Center Task Force. The Task Force conducted 9 public meetings and looked at past reports and other funding models from centers around the state and in the southeast (including hotel occupancy and food & beverage taxes). They found that 67% of the current revenue generated by the Civic Center comes from the Arena. They also studied the Economic Impact Study by WCU – direct and indirect effects of the expenditures by the Civic Center created a total impact on the local economy over $22 Million. Measuring the impact in jobs, the Civic Center creates 295 direct jobs and 73 indirect jobs for a total of 368 jobs in the local economy. The Civic Center Task Force brought their findings to Council: One finding was two options – One was to convert the Civic Center to Performing Arts Center and build a new arena on a new location; The other option was to renovate the Arena and build a new Performing Arts Center. The Civic Center Commission voted to support the second option to build a new Performing Arts Center at the Parkside site. The other finding is that there is no "silver bullet" for financing these options. There would need to be a combination of public and private money for any scenario. Way to finance included: a hotel occupancy tax of 1% generated $1.3 Million a year (in 2006 numbers) – that current amount is now approximately $1.6 Million a year; private contributions proposed at $10 Million; seek a County contribution; ½% sales tax which would generate (at the time) $15 Million/year; food and beverage taxes; other state and federal contributions; and a Tax Increment Financing District; (6) in 2008 City Council receives public input and passes a resolution committing to reserve space for five years for a performance center adjacent to Pack Square Park as part of a multiple use redevelopment project on the "Parkside" site with details included in a joint development agreement to be developed; (7) in 2009 City representatives are contacted about the possibility of bidding to host the Southern Conference College Basketball Tournament again; (8) in 2010, the Southern Conference awards the Men's and Women's SoCon Basketball Tournament to Asheville. The City applies and is successful in its application to the Tourism Development Authority for a $2 Million Tourism Product Development Fund grant to be used for capital improvements. Buncombe County supports the partnership with a contribution of $1 Million and the ABC Board provides $25,000/year in educational support for an underage drinking prevention campaign. UNC-Asheville agrees to host the women's games in the new Kimmel Arena; (9) in late 2010 U.S. Cellular expresses interest and possible sponsorship opportunities at the Civic

Center; and (10) in 2011 staff conducts a project assessment, due diligence, confers with City Council and receives direction, announcement of a tentative agreement, which brings us to public comment at this meeting.

As the project continued to develop, one of the tasks that staff tried to do was benchmark other facilities to understand their agreements to use as a guide as the project moved forward in their due diligence. He then briefly talked about the following benchmark projects reviewed, along specifics in their naming rights: Bank of Kentucky Center in Highland Heights Kentucky; Bojangles' Coliseum in Charlotte North Carolina; Canada Inns Stadium in Winnipeg Manitobia; Carolina First Arena in Charleston South Carolina; RBC Center in Raleigh North Carolina; U.S. Cellular Arena in Milwaukee Wisconsin, Bancorp South Center in Tupelo Mississippi; and Bi-Lo Center in Greenville South Carolina.

Mr. Powers then reviewed the following key points of the tentative agreement: (1) Five-year agreement: $750,000 over 5-year period, plus $60,000 in capital cost-sharing, totaling $810,000; (2) Five percent attendance incentive/deduction over four years totaling additional $32,000; (3) additional three year extension would increase the amount of an additional $511,310 for a total of approximately $1,350,000 over eight years; (4) marking and promotional assistance from U.S. Cellular; (5) utilize initial funding for support of current facility upgrades; (6) exterior signage: façade facing I-240; (7) marquee sign: facing Haywood Street; (8) highway directional signage/local wayfinding signage; (9) interior signage/logo inclusion on marketing material, tickets, etc.; (10) 2500 square fee of space for product displays; (11) event space on an annual basis; (12) confirms that ExploreAsheville.com Arena, Banquet Hall, Museum, Thomas Wolfe Auditorium, Exhibit Hall and Vendors (soft drink, beer, food, etc.) are allowed as continued future sponsorship opportunities for the facility; and (13) the final action in the U.S. Cellular partnership is for City Council to receive public comment and vote on the licensing agreement at the next formal meeting scheduled for November 22, 2011.

Vice-Mayor Newman said there are a lot of good things happening at the Civic Center and a lot of people are working hard to see the facility reach more of its potential. There has been a genuine effort to solicit other private sector partners in recent years but until this partnership, the idea of private sector investments have not been very fruitful. While some organizations or businesses might not have been interested 3-5 years ago, they may be interested today.

Vice-Mayor Newman then moved (1) to affirm the use of a naming rights partnership as part of the overall financing strategy for the Civic Center improvements; (2) to accept the proposal from U.S. Cellular Corporation; and (3) to defer implementation of the current proposed partnership until December 31, 2011, and allow any other organization that wants to put forward a credible serious proposal for partnering with the City on a public/private partnership for investments in the Civic Center to put forward a proposal for consideration. If no credible proposal is presented during that time period that presents a superior value proposition to the City of Asheville, compared to the current proposal that we have received, then the current proposal would go into effect on January 1, 2012. If the City Manager does receive a credible proposal that presents a superior value proposition to the community of Asheville during that time, Council direct the City Manager and his staff to consider that and to bring this issue back to City Council for deliberation. This motion was seconded by Councilman Davis.

Councilman Bothwell felt there are two separate ideas and wondered if they should be voted on separately. A lot of comment he has received has been about not selling the naming rights. His sense of the citizenry is that we are in a different time than in 2001 when Council approved the naming rights for the Civic Center. We need to reconsider reducing the corporate influence in government. He understood the public/private partnership concept, but as far as naming the core civic institution for our City, he felt the citizens need to have a voice on whether or not we should put a corporate name on the building. The separate issue is if they do, then we should get the highest price for it.

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Councilman Smith felt that what Mr. Power's presentation underscored was the 15-year history of trying to devise a strategy for improvements to the Civic Center. It also underscored the duration of public debate, input and studies and year after year Council commitment to public/private partnerships, including naming rights, in order to restore our Civic Center

Councilwoman Manheimer said it was ironic to hear comments about the Civic Center at this time because for years she has heard comments about why not tear the Civic Center down and build something different. She said the Civic Center is an economic engine for Asheville. It brings is tons of folks who dine in our restaurants, stay in our hotels, shop in our shops, and pay sales tax. One concern she has about the information being distributed about the sale of these naming rights is the omission of the subsidy that the citizens of Asheville pay to support the Civic Center. The Civic Center is supported solely by the citizens of Asheville and not Buncombe County. It is the Asheville residents' hard-earned property taxes and sales tax that fund our General Fund that in turn pay for the subsidy that is required to run the Civic Center. It is not a break-even business. For some years it has been subsidized by Asheville residents for several hundred thousand dollars. That is just in operational costs. That is money we can't spend on new sidewalk construction or whatever urgent need there is. That is just a flat General Fund subsidy. That piece of information has been missing. As Council members, we must make sure that we have all the services we need and we have clearly heard from residents not to raise property taxes. So, Council has to find solutions that combine those two things – provide services and don't raise taxes. So while she would like to say we don't ever need to engage in corporate partnerships and always preserve the name of Asheville, that seems unrealistic to her. There are cities in this country that are having to file bankruptcy, stop bus service, scale back police, etc., but Asheville is not going to be one of them because we are fiscally careful. The other issue raised is that if we are going to sell the naming rights, it should have been an open process and granted, perhaps it should have been. However, she did some research on the sale of naming rights and it does appear there are two ways to do it. You can put it out for bid (which is usually done for new construction) or you can do it as a negotiated economic development deal (which is done without much involvement by City Council at all other than to let them know its happening). In this case, that is the method use noting that it has been a very open dialogue that Council was interested in selling the naming rights for years but we didn't have any takers. She supported Vice-Mayor Newman's motion that would allow for other people to basically put in an upset bid. Now that everyone knows the offer on the table and all the components of it, let's invite someone else to try to upset that offer.

Councilman Davis said that he was a member of the Civic Center Task Force and what bothers him most are the omissions made along the way. This has been a very open process and we have been fighting very hard to develop partnerships for years. Before that we worked hard to try to get partnerships with the County, Tourism Development Authority, etc. to bring the building to where we are now. The building is now, through partnerships, finally being renovated. The fraction of money from the naming rights is needed to make a new concession area. The Civic Center has good structure and is being rehabbed. There have not been a lot of people stepping forward for partnerships even though this is an energy driver for downtown.

Councilman Bothwell felt the amount of money that this advertising deal (not a partnership) amounts to about $5 on a tax bill for $175,000 house each year. We would not be talking about a large tax increase. At the current rate, this agreement for $1.3 Million over 8 years, would be .1% of the City budget. The operations cost for the Civic Center is over $2.1 Million and this deal is just $150,000 a year. He felt we could add $1 to parking fees for events or add $1 to ticket fees to make this money up, other than selling the name of our Civic Center. We have heavily invested in our name with advertising through the Tourism Development Authority, the Chamber of Commerce, etc. for years building up the reputation of Asheville as a cute town in the mountains, but now the Civic Center will have the same face at Atlanta and Charlotte. He noted that the possible extra money is also a possible loss if attendance revenues are lower. We are not just talking about a partnership to name an arena, we are talking about Asheville and we

are worth more than that. We are losing the value of the repetition of Asheville every time an ad is run, a ticket is printed at the Civic Center or at TicketMaster, etc. He wondered if the amount of advertising we are losing might be worth more than the amount of advertising we are selling. If Council adopts this resolution, he suggested we aggressively market to prove that there is any bidding going on.

City Manager Jackson said that City staff will make special efforts to market this and advise Council what those steps to market it would be.

The following individuals spoke in opposition of selling the naming rights of the Asheville Civic Center, basically citing there are other ways to rehabilitate the facilities and renaming it will take away from the unique quality of Asheville:

Mr. Timothy Sadler
Mr. Paul Van Heden
Mr. Mark Bloom
Ms. Amena Spangler
Mr. Matthew Byrd
Mr. Tim Ballard
Mr. Jim Aycock
Mr. Andrew Stevens

The following individuals spoke in support of selling the naming rights of the Asheville Civic Center due to the history outlined by Mr. Powers:

Mr. Mike Burke, Chairman of the Civic Center Commission
Mr. Lou Bissette
Mr. Dennis Justice

Councilman Smith said that Asheville has unique restrictions around using our water and the hotel occupancy tax. Our hotel occupancy tax is only 4% where the state average is between 6-7%. Of that 4%, 3% goes to the Tourism Development Authority and 1% goes to the Tourism Product Development Fund. They have been generous in that they are returning some of that tax money into public infrastructure that will fuel tourism. If our legislators in Raleigh were willing to allow Asheville to simply rise to the state average, and not single us out to have the lowest occupancy tax in the state of North Carolina, then we would have the dollars to repair and renovate our infrastructure, like the Civic Center. City Council has lobbied hard but we need more voices. He urged the public to contact our legislators and let them know you think this is important.

Vice-Mayor Newman said that the Civic Center in unique in that it is not a core function of the City government. In many ways it is a commercial facility – full of concerts, trade shows, etc. Whatever decision is made about naming rights does not automatically mean all City facilities are open for naming. This is a site specific question about this particular facility. We must seek out every opportunity we can to develop ways to pay for the infrastructure in the City because the mechanisms most cities have in our state are not at our disposal. If property taxes were raised, there would be a lost list of things that would be so important for Council to devote those resources to, chances are the Civic Center renovation would not be in the top 10.

Mayor Bellamy said that she cannot take credit for this partnership. Staff worked with U.S. Cellular on this opportunity. She did make the announcement, noting that staff had the consensus of Council to move forward. She heard no dissenting voices from City Council in closed session to not move this partnership forward. At this time, copies of those minutes can be obtained from City Clerk Maggie Burleson. She said that this is change to a lot of people and they felt they were not involved in the process because they felt the process was not as public as people would have liked. To them she apologized. She personally received a phone call from

the Mr. Freeman, CFO of Ingles, apologizing for their e-mail sent. Mr. Freeman said that was a surprise to him and others in the corporation to have the e-mail forwarded to the community in the way it was. He said that in the future Ingles would like to be at the table for other endeavors, acknowledging that Ingles in the past was not receptive to naming opportunities at the Civic Center. She noted that not only did the City have future naming opportunities but also UNC-Asheville and the Performing Arts Center. She said our legislators can help us and it was the consensus of Council to provide a link on the City's webpage to our state legislators. She thanked those who have come to the table to help with the Civic Center, noting there are other opportunities for partners in our community to help. She has been on City Council for 12 years and has never seen this level of desire to protect the Civic Center and she hoped it doesn't stop. From all the e-mails and conversations she has personally had, she felt this is a balanced conversation. The name of the Civic Center does not change the soul of who our community is. No one thing or name will stop Asheville from being Asheville and being celebrated for being different. As a native of Asheville, she has watched our community grow into being in a class by itself. She hoped that as we move forward we will gain more partners to help us with our bigger financial issues. She also hoped that we will look at this issue and learn from it. Like Councilwoman Manheimer, she too thought we need to look at this type of process for economic development issues in the future. She asked the City Attorney to see how we can meet the needs of our partners and also make sure the public is informed. She does not feel that any attendance at a graduation, or attendance at Moogfest will be diminished because the building is named the U.S. Cellular Center. She hoped our relationship with U.S. Cellular (noting that the City partnered with U.S. Cellular to bring Asheville cellular service) continues.

The motion made by Vice-Mayor Newman and seconded by Councilman Davis carried on a 6-1 vote, with Councilman Bothwell voting "no."

**RESOLUTION BOOK NO. 34 – PAGE 200**

Councilman Smith moved for the adoption of Resolution No. 11-229. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 201**

Councilman Smith moved for the adoption of Resolution No. 11-230. This motion was seconded by Councilman Russell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 202**

Councilman Smith moved for the adoption of Ordinance No. 4037. This motion was seconded by Councilman Russell and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 240**

At 10:45 p.m., Mayor Bellamy announced a short recess.

**B. RESOLUTION WAIVING THE STREET CLOSING FEE FOR THE CLOSING OF A PORTION OF COLLEGE STREET NECESSARY FOR THE BUNCOMBE COUNTY LIFE SAFETY ADDITION**

Due to the length of the meeting, at the suggestion of Mayor Bellamy, Councilman Smith moved to delay action on New Business Items "B", "C", and "D" until the December 13, 2011, meeting. This motion was seconded by Councilman Bothwell and carried unanimously.

**C. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MANAGEMENT AGREEMENT WITH FIRST TRANSIT INC. TO MANAGE THE OPERATION OF THE ASHEVILLE TRANSIT SYSTEM**

Due to the length of the meeting, at the suggestion of Mayor Bellamy, Councilman Smith moved to delay action on New Business Items "B", "C", and "D" until the December 13, 2011, meeting. This motion was seconded by Councilman Bothwell and carried unanimously.

**D. RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE'S PARTICIPATION IN THE N.C. STATE TREASURER'S OTHER POST EMPLOYEE BENEFIT FUND**

**RESOLUTION SUSPENDING RETIREE HEALTH CARE COVERAGE FOR CITY EMPLOYEES HIRED AFTER JUNE 30, 2012**

Due to the length of the meeting, at the suggestion of Mayor Bellamy, Councilman Smith moved to delay action on New Business Items "B", "C", and "D" until the December 13, 2011, meeting. This motion was seconded by Councilman Bothwell and carried unanimously.

**E. RESOLUTION NO. 11-231 - RESOLUTION ADOPTING AN AMENDMENT TO THE 2010 CONSOLIDATED ANNUAL ACTION PLAN FOR GREEN OPPORTUNITIES WEATHERIZATION ASSISTANCE**

Community Development Director Jeff Staudinger said that this is the consideration of a resolution authorizing an amendment to the City's Consolidated Annual Action Plan for 2010-11 for the Green Opportunities Weatherization Assistance CDBG Grant.

Green Opportunities requests an amendment to their 2010-2011 Weatherization Assistance CDBG grant agreement. Their request is:

1) To modify the number of homes served from 65 to 45.
2) To expand the geographic service area to include all Asheville city.
3) To modify the per house reimbursement rate from $830.77 to $1,466.16 per home.

Two external conditions have led to this request. First, federal DOE Recovery Act (ARRA) funding requires that all persons performing DOE funded weatherization be paid Davis-Bacon wages. Green Opportunities had been paying their trainees a stipend, but to perform ARRA-funded weatherization activity were required to pay $18 an hour. Davis-Bacon regulations allow for stepped wages to be paid for persons in a certified apprenticeship program. Green Opportunities designed an apprenticeship curriculum, and then applied for and received certification. However, this process took months, during which production essentially ceased. Second, the State Energy Office tightened their guidelines for prioritization of applications. As Community Action Opportunities implemented these guidelines in their four-county service area, the number of applications approved from the limited targeted geographic area served by Green Opportunities dwindled significantly. The proposed change will immediately increase the flow of homes to be weatherized. Community Action Opportunities indicates it has sufficient approved applications in the City to assign to Green Opportunities, which in turn has indicated it can ramp up its production levels to meet the proposed number to be served. The increase in the reimbursement rate will help Green Opportunities meet the increased production rate.

The proposed Action Plan Amendment directly relates to the Council's Strategic Goal of "Affordable."

The Housing and Community Development Committee agrees with this recommendation to approve the amendment.

Pro:

- The proposed amendment allows for efficient use of funds in a timely fashion, and will assist in meeting overall program goals. The funds will also assist the sponsoring organization's viability and ability to meet community needs.

Con:

- The production output will be decreased from 65 to 45 homes.

The proposed amendment uses funds already allocated to the specific program. There is no increase in administrative responsibility for the City. No City General Funds are allocated to this program.

Staff recommends that Council approve the amendment to the 2010-2011 Consolidated Annual Action Plan for Green Opportunities Weatherization Assistance program.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 11-231. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Councilman Russell voting "no."

**RESOLUTION BOOK NO. 34 – PAGE 203**

**F. RESOLUTION NO. 11-232 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT THROUGH THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY DURING THE 2012 TOURISM DEVELOPMENT PRODUCT FUND FOR CIVIC CENTER RENOVATIONS**

Director of Finance & Management Services Lauren Bradley said that this is review of potential projects for application to the Tourism Product Development Fund (TPDF).

The Buncombe County Tourism Development Authority's Tourism Product Development Fund (TPDF) was created by the State Legislature in 2001. This makes funding possible for tourism projects that will increase the number of overnight stays by visitors in Buncombe County lodging properties.

The City has previously received TPDF funding for the Wayfinding Partnership and Civic Center phase one upgrades. Additionally, the WNC Soccer Foundation received $400,000 of funding for the City's John B. Lewis Soccer complex in 2002, 2004, and 2009.

She provided Council with a "Frequently Asked Questions" information sheet that outlines the criteria and funding process for the TPDF. This document answers many of the questions about the guidelines and eligibility for funding of projects.

In an effort to leverage resources and build on priorities in the City's strategic operating plan, develop partnerships with the Tourism Development Authority, and meet core funding criteria of the TPDF, staff has developed the following summary of possible projects for Council review:

<u>Phase II Civic Center Improvements</u>

The Tourism Product Development Fund (TDPF) grant application will continue to leverage the strong partnerships that have been built between the City, the Tourism Development Authority, Buncombe County, and other private and public sector partners, to take the Civic Center to the

next level as the region's premiere event and entertainment venue. The design team is currently reviewing the preliminary costs estimates.

The project will seek to prioritize the following items:

1. Completion of renovations for the upper seating bowl
2. Development of a Club Level amenity that is highly desirable for premium events
3. Create additional required storage for the new seating and risers
4. Build additional capacity for the new Asheville Craft Beer Garden feature
5. Provide renovations to the lobby area to aid the increased activity from events occurring in both the arena and auditorium concurrently

This action complies with the City Council Strategic Operating Plan of Job Growth and Community Development in that it considers funding for Civic Center improvements by building momentum with existing partners.

**Future Funding Cycles**

Greenway Development: Beaucatcher Overlook

Initial planning must occur prior to submitting a greenway project for possible funding. Staff has identified Beaucatcher Overlook as a candidate for a future Tourism Product Development funding cycle. The project is currently in the design phase and will not be completed in time for the January 2012 cycle. However, this project will be ready for submission for a TDPF grant in January 2013, with specific construction costs identified by mid-to-late 2012. The FY 11-12 CIP includes funding for construction of the Beaucatcher Overlook greenway and could be used as matching fund for a TPDF grant. Any TPDF funding would allow the City to extend the greenway or apply CIP funds to other projects.

Future greenway projects have also been identified below. The proposed five-year CIP includes a funding allocation for design work for the Town Branch Greenway project in FY 12-13 with construction funding contemplated in FY 13-14, making it a feasible candidate for TDPF consideration in the 2014 funding cycle. If funding were awarded for construction of the Town Branch greenway, CIP funding would be made available for additional greenway projects, as listed below.

| Project | Funding Cycle Year | Cost for Land Acquisition | CIP Allocation for Land Acquisition | CIP Design Costs | CIP Allocation for Design |
|---|---|---|---|---|---|
| Town Branch Greenway | January 2014 | $350,000 | FY 12-13 | $250,000 | FY 13-14 |
| Clingman Forest Greenway | January 2015 | $220,000 | Not currently included in CIP | $100,000 | Not currently included in CIP |
| Nature Center Visitors Enhancement Project | January 2016 | N/A | N/A | $250,000 | Not currently included in CIP |

Pedestrian Trash Receptacles in the Central Business District (CBD)

There are approximately 136 pedestrian receptacles in the CBD that are serviced seven days per week. The overall condition of the metal receptacles is 'average' due to over 15 years of heavy

use in a public setting. Additionally, the existing containers are not optimal for cleaning beneath the receptacle and are designed such that trash can easily blow onto the sidewalk or street.

The Asheville Department of Public Works would like to partner with the Downtown Commission, Downtown Association and Downtown Asheville Residential Neighbors to replace these receptacles with new containers that include recycling capabilities. In addition to replacing the existing containers, the project would add approximately 60 containers in strategic locations. Replacing these old receptacles would improve downtown cleanliness, resulting in more visitors who stay in Asheville for longer periods of time.

The joint trash/recycling containers cost approximately $2,200 each and can be artistically customized to coordinate with the Wayfinding signs.

We would propose to replace 136 trash cans and add an additional 64 trash receptacles. The project can be completed with the 24 months required by the TPDF Grant.

*Benefits:*

- Proposal includes recycling containers;
- Proposal adds 60+ trash/recycling receptacles;
- The design of the containers can be customized to fit Asheville;
- The design of the trash receptacles do not allow for trash to blow out or get stuck under the container;
- The trash receptacles can be solar powered;
- The receptacles have a sensor that can communicate to let staff know when they are full.

In order to make the project viable for TDPF funding, staff is seeking grant resources to use a matching funds for the City's share. Therefore, this project would not be a feasible candidate for consideration in the 2013 or 2014 funding cycle.

Staff identified a project for this year's funding cycle, in addition to possible projects for future cycles. Given that the TPDF does not fund design work, any preliminary work must be completed by the city. More detailed preliminary work will be completed prior to any project being selected for an application to the TPDF.

Each project summary includes the relationship to the strategic operating plan and fiscal information available at this time. It should be noted that fiscal impacts are preliminary. In some projects, local funding has been identified; however, some projects do not have sources of funds identified.

City staff recommends City Council review the project summaries and provide direction to staff.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Newman moved for the adoption of Resolution No. 11-232 to apply for grant funding from the Tourism Product Development Fund during the 2012 funding cycle for the Asheville Civic Center renovations. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 204**

## G. BOARDS & COMMISSIONS

### Affordable Housing Advisory Committee

Vice-Mayor Newman said that Mr. Anthony Goodson, representing the Housing Authority, has resigned as a member of the Affordable Housing Advisory Committee, thus leaving an unexpired term until September 1, 2014.

The following individuals have applied for the vacancy on the Affordable Housing Advisory Committee: Richard Warren, Paul Reeves, Roger Hartley, Melissa Anne Bernard and Jayden Gurney.

Vice-Mayor Newman said that the Boards & Commissions Committee felt it was important to have representation from the Housing Authority on this Committee and recommended interviewing Jayden Gurney, as the representative from the Housing Authority.

Therefore, it was the consensus of Council to interview Mr. Gurney for a position on the Affordable Housing Advisory Committee.

### RESOLUTION NO. 11-233 - RESOLUTION APPOINTING MEMBERS TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that the terms of Charles Worley and Jim Ellis, as members on the Alcoholic Beverage Control (ABC) Board expired on November 13, 2010.

The following individuals have applied for the vacancies on the ABC Board: Genny Lynn Beville and Tim Flora.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended reappointing Jim Ellis. It was also the Committee's recommendation to appoint William A. Russell Jr.; after he was no longer a member of Council to make that appointment and that action be taken on December 13, 2011.

Vice-Mayor Newman moved to reappoint Mr. Ellis to serve an additional three year term, term to expire November 13, 2014, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried on a 6-1 vote with Councilman Bothwell voting "no".

Councilman Bothwell voted against reappointment of Mr. Ellis because he felt the ABC Board should be held accountable to the citizens of Asheville for the things that went wrong on their watch. He thought all Board members should have resigned. The ABC Board is a fairly unique board and oversees a multi-million dollar business. Board members have a fiduciary responsibility.

Mayor Bellamy said it was brought to her attention that there have been some issues that have happened under Council's watch and wondered if Council should have to resign. She questioned how our policy-making boards (who are not there for day to day operations) are going to have to adhere to the criteria that every board/commission is responsible for staff action. She wondered how we should hold people accountable at this level or at our appointee level going forward.

Mayor Bellamy wondered if the Boards & Commissions Committee should review criteria of what every board/commission member is responsible for.

Councilman Davis understood Councilman Bothwell's persistent position, but felt he is continuing to cast doubt on the findings of the ABC report. The reality is the ABC Board does not

look at the individual receipts of the credit card expenses. In fact, the audit was received the same day Mr. Candy chose to resign.

**RESOLUTION BOOK NO. 34 – PAGE 205**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Matthew Byrd, with Occupy Asheville, read a letter from the Occupy Asheville General Assembly which considered the request made by Councilman Smith and the Asheville Police Department to elect representatives from their group to communicate consistently with City staff and APD. This request was voted on at their General Assembly on Friday, November 11, 2011, and was unanimously rejected. He then stated the reasons for rejection in summary being (1) they seek to communicate with consensus through a structure that provides for direct audience with all interested members; and (2) their trust in the City has been diminished by recent actions by the Asheville Police Department.

Mr. Mark Bloom expressed concerns about (1) why the existing traffic signal turns red along Biltmore Avenue since Aston Street is closed for construction activities; and (2) the new traffic signal at the intersection of Hospital Drive and Victoria Road is not operating in an efficient manner. City Manager Jackson said that he would refer the concerns to our Director of Transportation.

Mr. Paul Choi expressed concern about the traffic pattern on Hospital Drive. City Manager Jackson said that this traffic-related concern would be referred to our Director of Transportation as well.

As this is Vice-Mayor Newman's last formal Council meeting, he said it has been a great pleasure to work with all of Council and wished the new Council all the best. He hoped their service would be as rewarding for them as it has been for him. It was been a privilege for him to be a part of it.

As this was also Councilman Russell's last formal Council meeting, he said it has been an honor and privilege to serve the citizens of Asheville.

**PRIMARY ELECTION RESULTS – CITY OF ASHEVILLE – OCTOBER, 11, 2011; GENERAL ELECTION RESULTS – CITY OF ASHEVILLE – NOVEMBER 8, 2011; AND GENERAL ELECTION RECOUNT RESULTS – CITY OF ASHEVILLE – NOVEMBER 8, 2011**

Attached hereto as Exhibit "A" is the abstract containing the number of legal votes in the Primary Election, City of Asheville, held on October 11, 2011. Also attached as Exhibit "B" is the abstract containing the number of legal votes cast in the General Election, City of Asheville, held on November 8, 2011. In addition, Exhibit "C" is the abstract of votes for the General Election Recount of November 8, 2011.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 11:25 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

**PRIMARY ELECTION**
October 11, 2011
ABSTRACT OF VOTES
FOR
STATE OF NORTH CAROLINA

**INSTRUCTIONS**

THREE COPIES are to be made. One copy is to be signed by the County Board of Elections and delivered by them, when the canvass is concluded, to the Clerk of Superior Court. One copy is to be retained by the County Board of Elections. One copy is to be mailed on canvass day to the Chairman of the State Board of Elections, Raleigh, North Carolina (GS 163-182.6).

**STATE OF NORTH CAROLINA**
**COUNTY OF BUNCOMBE**

The County Board of Elections for said county, having opened, canvassed, and judicially determined the original returns of the election in the precincts in this county, held as above stated, do hereby certify that the above is a true abstract thereof, and contains the number of legal ballots cast in each precinct for each office or referendum named, the name of each person or choice voted for, their party affiliation (where applicable), and the number of votes cast for each person or choice for the item named.

This is the 18th day of October 2011

This day personally appeared before me, [redacted] Chairman of the County Board of Elections, who being duly sworn, says the abstract of votes herein contained is true and correct, according to the returns made to said Board.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed My notarial seal this the 18 day of October, 2011.

(Seal)

My Commission (if any) Expires: 7/11/2016

Exhibit A

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| | STATISTICS | | CITY OF ASHEVILLE COUNCIL | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | REGISTERED | VOTERS - TOTAL | BALLOTS CAST - TOTAL | TJ Thomasson | Bill Russell | Tim Peck | Chris Pelly | Marc Hunt | Lael Gray | Jan Davis | Mark Cates | Saul Chase |
| 01.1 STEPHENS LEE CENTE | 1901 | 100 | 5 | 0 | 3 | 62 | 59 | 54 | 46 | 22 | 11 |
| 02.1 MONTFORD COMM CTR | 3335 | 305 | 12 | 0 | 4 | 206 | 214 | 247 | 116 | 24 | 24 |
| 03.1 ST MARKS LUTHERAN | 2677 | 205 | 12 | 0 | 4 | 139 | 148 | 141 | 78 | 30 | 18 |
| 04.1 N ASHEVILLE COMM C | 1431 | 250 | 14 | 0 | 10 | 139 | 149 | 148 | 123 | 66 | 16 |
| 05.1 ST EUGENES CHURCH | 2447 | 408 | 10 | 0 | 29 | 169 | 214 | 196 | 241 | 171 | 34 |
| 06.1 TRINITY PRESBYTERI | 1479 | 171 | 11 | 0 | 16 | 112 | 99 | 86 | 70 | 53 | 15 |
| 07.1 KENILWORTH PRES CH | 1776 | 274 | 16 | 0 | 10 | 203 | 212 | 182 | 75 | 50 | 21 |
| 08.2 SHILOH COMMUNITY C | 2449 | 120 | 5 | 0 | 7 | 60 | 55 | 46 | 61 | 40 | 27 |
| 08.3 FAITH TABERNACLE C | 1608 | 74 | 7 | 0 | 3 | 46 | 34 | 40 | 37 | 13 | 21 |
| 09.1 MURPHY-OAKLEY CENT | 2893 | 173 | 21 | 0 | 20 | 71 | 97 | 64 | 73 | 69 | 30 |
| 10.1 W C REID REC CENTE | 1596 | 77 | 3 | 0 | 8 | 38 | 37 | 41 | 41 | 15 | 10 |
| 11.1 ASHEVILLE SENIOR C | 1468 | 76 | 11 | 0 | 4 | 49 | 57 | 50 | 23 | 7 | 12 |
| 12.1 HALL FLETCHER SCHO | 1953 | 170 | 12 | 0 | 6 | 104 | 134 | 118 | 50 | 27 | 21 |
| 13.1 W ASHEVILLE CHURCH | 2252 | 113 | 4 | 0 | 6 | 70 | 81 | 71 | 44 | 22 | 11 |
| 14.2 ASHEVILLE PRE-SCHO | 2102 | 123 | 5 | 0 | 11 | 76 | 81 | 67 | 57 | 23 | 12 |
| 14.3 PAUL AMOS REC CENT | 1227 | 45 | 3 | 0 | 3 | 31 | 32 | 20 | 25 | 5 | 7 |
| 15.1 VANCE ELEMENTARY | 2139 | 225 | 19 | 0 | 15 | 128 | 153 | 138 | 96 | 32 | 15 |
| 16.2 W ASHEVILLE LIBRAR | 2619 | 199 | 9 | 0 | 13 | 112 | 135 | 114 | 80 | 49 | 33 |
| 17.1 BETHISRAEL SYNAGOG | 1792 | 177 | 3 | 0 | 13 | 95 | 92 | 90 | 96 | 58 | 17 |
| 18.2 TC ROBERSON HIGH | 4255 | 266 | 6 | 0 | 18 | 130 | 141 | 92 | 137 | 136 | 32 |
| 19.1 SKYLAND FIRE DEPT | 1128 | 42 | 0 | 0 | 3 | 13 | 15 | 6 | 37 | 24 | 9 |
| 20.1 ASHEVILLE APOSTOLI | 1004 | 63 | 9 | 0 | 4 | 37 | 42 | 36 | 26 | 15 | 6 |
| 21.1 HAW CREEK ELEMENTA | 2589 | 294 | 9 | 0 | 15 | 212 | 128 | 150 | 133 | 83 | 25 |
| 22.2 IRA B JONES SCHOOL | 2197 | 357 | 13 | 0 | 26 | 186 | 209 | 186 | 182 | 114 | 15 |
| 23.3 EVERGREEN CHARTER | 945 | 194 | 1 | 0 | 8 | 146 | 79 | 87 | 115 | 51 | 10 |
| 24.1 CROSSROADS ASSEMBL | 2270 | 96 | 4 | 0 | 23 | 37 | 35 | 28 | 57 | 55 | 8 |
| 25.1 CHARLESCBELL SCHOO | 2551 | 189 | 11 | 0 | 19 | 129 | 90 | 86 | 87 | 61 | 19 |
| 26.1 ASHEVILLE SCHOOL | 1600 | 89 | 5 | 0 | 8 | 44 | 54 | 49 | 50 | 18 | 13 |
| 28.1 COVENANT REFORMED | 2747 | 182 | 7 | 0 | 6 | 102 | 115 | 107 | 85 | 48 | 17 |
| 29.2 NEWHOPE PRESBYTERI | 2714 | 242 | 13 | 0 | 21 | 127 | 122 | 120 | 132 | 88 | 37 |
| 43.2 HAZEL2JOHNSTONSCHO | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 44.1 LOWER HOMINY 1 | 805 | 55 | 6 | 0 | 6 | 26 | 25 | 24 | 20 | 27 | 8 |
| 45.1 ENKA MIDDLE SCHOOL | 98 | 3 | 0 | 0 | 0 | 0 | 1 | 0 | 3 | 2 | 0 |
| 54.2 LUTHERAN CH NATIVI | 381 | 4 | 1 | 0 | 1 | 0 | 2 | 1 | 0 | 3 | 0 |
| 55.1 LIMESTONE 2 | 156 | 5 | 1 | 0 | 0 | 2 | 0 | 0 | 3 | 3 | 2 |
| 62.1 RICEVILLE 2 | 276 | 7 | 2 | 0 | 0 | 2 | 5 | 4 | 3 | 2 | 0 |
| 71.1 WOODLANDHILLSBAPTI | 100 | 19 | 0 | 0 | 2 | 11 | 11 | 9 | 7 | 8 | 1 |
| ONE STOP | 0 | 1172 | 82 | 0 | 62 | 683 | 755 | 656 | 477 | 277 | 135 |

| | STATISTICS | | CITY OF ASHEVILLE COUNCIL | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | REGISTERED VOTERS - TOTAL | CAST - BALLOTS TOTAL | TJ Thomasson | Bill Russell | Tim Peck | Chris Pelly | Marc Hunt | Lael Gray | Jan Davis | Mark Cates | Saul Chase |
| ABSENTEE | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| TRANSFER | 0 | 11 | 2 | 0 | 0 | 6 | 7 | 5 | 6 | 2 | 0 |
| TOTALS | 64971 | 6575 | 354 | 0 | 407 | 3803 | 3919 | 3559 | 2992 | 1793 | 692 |

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# GENERAL ELECTION
November 8, 2011
ABSTRACT OF VOTES
FOR
STATE OF NORTH CAROLINA

## INSTRUCTIONS

THREE COPIES are to be made. One copy is to be signed by the County Board of Elections and delivered by them, when the canvass is concluded, to the City Clerk (GS 163-300). One copy is to be retained by the County Board of Elections. One copy is to be mailed on canvass day to the Chairman of the State Board of Elections, Raleigh, North Carolina (GS 163-182.6).

**STATE OF NORTH CAROLINA**
**COUNTY OF BUNCOMBE**

The County Board of Elections for said county, having opened, canvassed, and judicially determined the original returns of the election in the precincts in this county, held as above stated, do hereby certify that the above is a true abstract thereof, and contains the number of legal ballots cast in each precinct for each office or referendum named, the name of each person or choice voted for, their party affiliation (where applicable), and the number of votes cast for each person or choice for the item named.

This is the 15th day of November 2011

This day personally appeared before me, JULES BYRD
Chairman of the County Board of Elections, who being duly sworn, says the abstract of votes herein contained is true and correct, according to the returns made to said Board.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed My notarial seal this the 15th day of NOVEMBER 2011.

(Seal)

My Com[redacted]n (if any) Expires: 7/11/16

[redacted]

[redacted]

Exhibit B

| | STATISTICS | | ASHEVILLE COUNCIL CITY OF ASHEVILLE | | | | | | | BILTMORE FOREST MAYOR TOWN OF BILTMORE FOREST | | BILTMORE FOREST COMMISSIONER TOWN OF BILTMORE FOREST | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | REGISTERED | VOTER TOTAL | BALLOTS - CAST TOTAL | Mark Cates | Saul Chase | Jan Davis | Lael Gray | Marc Hunt | Chris Pelly | WRITE-IN | F. Geoge Goosman Jr. | WRITE-IN | Chas. Wes Chapman | Glenn Kelly | Doris P. Loomis | WRITE-IN |
| 01.1 STEPHENS LEE CENTE | 1914 | 223 | 56 | 25 | 115 | 121 | 137 | 124 | 8 | | | | | | |
| 02.1 MONTFORD COMM CTR | 3384 | 598 | 76 | 59 | 256 | 461 | 414 | 356 | 0 | | | | | | |
| 03.1 ST MARKS LUTHERAN | 2686 | 452 | 96 | 67 | 167 | 311 | 323 | 297 | 2 | | | | | | |
| 04.1 N ASHEVILLE COMM C | 1448 | 396 | 126 | 42 | 218 | 214 | 246 | 197 | 6 | | | | | | |
| 05.1 ST EUGENES CHURCH | 2474 | 596 | 266 | 44 | 383 | 257 | 328 | 248 | 9 | | | | | | |
| 06.1 TRINITY PRESBYTERI | 1491 | 356 | 127 | 28 | 182 | 178 | 185 | 248 | 5 | | | | | | |
| 07.1 KENILWORTH PRES CH | 1781 | 411 | 95 | 41 | 155 | 282 | 295 | 284 | 2 | | | | | | |
| 08.2 SHILOH COMMUNITY C | 2566 | 303 | 165 | 60 | 183 | 109 | 113 | 124 | 5 | | | | | | |
| 08.3 FAITH TABERNACLE C | 2392 | 234 | 63 | 54 | 106 | 87 | 99 | 109 | 7 | | | | | | |
| 09.1 MURPHY-OAKLEY CENT | 2905 | 459 | 200 | 74 | 227 | 204 | 225 | 234 | 13 | | | | | | |
| 10.1 W C REID REC CENTE | 1594 | 186 | 50 | 40 | 119 | 94 | 94 | 98 | 1 | | | | | | |
| 11.1 ASHEVILLE SENIOR C | 1482 | 171 | 31 | 31 | 76 | 109 | 106 | 103 | 4 | | | | | | |
| 12.1 HALL FLETCHER SCHO | 1962 | 363 | 64 | 38 | 141 | 247 | 278 | 243 | 7 | | | | | | |
| 13.1 W ASHEVILLE CHURCH | 2256 | 310 | 78 | 30 | 137 | 204 | 220 | 183 | 8 | | | | | | |
| 14.2 ASHEVILLE PRE-SCHO | 2119 | 289 | 115 | 52 | 162 | 140 | 173 | 163 | 3 | | | | | | |
| 14.3 PAUL AMOS REC CENT | 1247 | 129 | 52 | 22 | 73 | 50 | 69 | 61 | 0 | | | | | | |
| 15.1 VANCE ELEMENTARY | 2150 | 467 | 118 | 40 | 213 | 280 | 323 | 287 | 2 | | | | | | |
| 16.2 W ASHEVILLE LIBRAR | 2630 | 466 | 167 | 74 | 213 | 248 | 277 | 258 | 7 | | | | | | |
| 17.1 BETHISRAEL SYNAGOG | 1809 | 363 | 114 | 53 | 202 | 187 | 208 | 166 | 3 | | | | | | |
| 18.2 TC ROBERSON HIGH | 4267 | 638 | 364 | 78 | 396 | 219 | 293 | 236 | 9 | | | | | | |
| 19.1 SKYLAND FIRE DEPT | 1136 | 125 | 76 | 11 | 78 | 32 | 44 | 52 | 0 | | | | | | |
| 20.1 BOARD OF ELECTIONS | 1021 | 132 | 40 | 24 | 59 | 84 | 79 | 72 | 2 | | | | | | |
| 21.1 HAW CREEK ELEMENTA | 2587 | 599 | 232 | 67 | 302 | 283 | 303 | 428 | 4 | | | | | | |
| 22.2 IRA B JONES SCHOOL | 2210 | 612 | 249 | 55 | 377 | 277 | 357 | 302 | 8 | | | | | | |
| 23.2 ASHEVILLE APOSTOLI | 401 | 79 | | | | | | | | | | | | | |
| 23.3 EVERGREEN CHARTER | 976 | 338 | 133 | 15 | 194 | 143 | 148 | 223 | 5 | | | | | | |
| 24.1 CROSSROADS ASSEMBL | 2268 | 368 | 202 | 54 | 248 | 109 | 142 | 141 | 7 | | | | | | |
| 25.1 CHARLESCBELL SCHOO | 2575 | 410 | 182 | 51 | 213 | 169 | 201 | 253 | 8 | | | | | | |
| 26.1 ASHEVILLE SCHOOL | 1611 | 242 | 97 | 36 | 138 | 106 | 136 | 112 | 3 | | | | | | |
| 27.2 BEAVERDAM COMM CTR | 838 | 121 | | | | | | | | | | | | | |
| 28.1 COVENANT REFORMED | 2801 | 331 | 92 | 40 | 163 | 188 | 217 | 180 | 2 | | | | | | |
| 29.2 NEWHOPE PRESBYTERI | 2719 | 608 | 306 | 81 | 360 | 238 | 292 | 285 | 5 | | | | | | |
| 30.2 AVERYS CREEK ELEM | 1612 | 221 | | | | | | | | | | | | | |
| 30.3 AVERYS CREEK CENTE | 2291 | 291 | | | | | | | | | | | | | |
| 31.1 BILT FOREST TWN HA | 1315 | 291 | | | | | | | | 252 | 10 | 252 | 248 | 260 | 12 |
| 32.1 BLACK MOUNTAIN 1 | 1802 | 234 | | | | | | | | | | | | | |
| 33.2 BLACK MTN PRIMARY | 1210 | 466 | | | | | | | | | | | | | |
| 33.3 BLACK MTN ELEMENTA | 1939 | 691 | | | | | | | | | | | | | |

| | STATISTICS | | ASHEVILLE COUNCIL CITY OF ASHEVILLE | | | | | | | BILTMORE FOREST MAYOR TOWN OF BILTMORE FOREST | | BILTMORE FOREST COMMISSIONER TOWN OF BILTMORE FOREST | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | REGISTERED - TOTAL VOTERS | BALLOTS - TOTAL CAST | Mark Cates | Saul Chase | Jan Davis | Lael Gray | Marc Hunt | Chris Pelly | WRITE-IN | F. Geoge Goosmann WRITE-IN | WRITE-IN | Chas Charles | W. Grimes | E. Glenn Kelly | Doris P. Loomis | WRITE-IN |
| 34.1 BLACK MOUNTAIN 3 | 1240 | 476 | | | | | | | | | | | | | | |
| 35.1 BLACK MOUNTAIN 4 | 1740 | 642 | | | | | | | | | | | | | | |
| 36.1 BLACK MOUNTAIN 5 | 1890 | 295 | | | | | | | | | | | | | | |
| 37.1 GARREN CREEK FD | 1343 | 244 | | | | | | | | | | | | | | |
| 38.2 CANECREEK MIDDLE S | 1515 | 233 | | | | | | | | | | | | | | |
| 38.3 TRINITY OF FAIRVIE | 2980 | 446 | | | | | | | | | | | | | | |
| 39.2 FAIRVIEW VFD | 1641 | 304 | | | | | | | | | | | | | | |
| 39.3 FAIRVIEW COMM CTR | 2133 | 349 | | | | | | | | | | | | | | |
| 40.2 FLAT CREEK | 3511 | 375 | | | | | | | | | | | | | | |
| 41.1 FRENCHBROAD FIREDE | 2727 | 254 | | | | | | | | | | | | | | |
| 42.1 HAZEL1EMMAELEMENTA | 2047 | 160 | | | | | | | | | | | | | | |
| 43.2 HAZEL2JOHNSTONSCHO | 1578 | 141 | 0 | 0 | 0 | 1 | 1 | 1 | 0 | | | | | | | |
| 44.1 LOWER HOMINY 1 | 3787 | 610 | 110 | 18 | 108 | 68 | 71 | 71 | 2 | | | | | | | |
| 45.1 ENKA MIDDLE SCHOOL | 3694 | 376 | 3 | 1 | 4 | 1 | 3 | 1 | 0 | | | | | | | |
| 46.1 LOWER HOMINY 3 | 1349 | 217 | | | | | | | | | | | | | | |
| 47.1 UPPER HOMINY 1 | 3962 | 476 | | | | | | | | | | | | | | |
| 48.1 HOMINY VALLEY ELEM | 3396 | 357 | | | | | | | | | | | | | | |
| 49.1 UPPER HOMINY 3 | 3804 | 406 | | | | | | | | | | | | | | |
| 50.1 IVY 1 | 1567 | 238 | | | | | | | | | | | | | | |
| 51.2 N WINDY RIDGE SCHO | 1919 | 215 | | | | | | | | | | | | | | |
| 52.1 LEICESTER 1 | 3383 | 403 | | | | | | | | | | | | | | |
| 53.1 LEICESTER 2 | 2695 | 418 | | | | | | | | | | | | | | |
| 54.2 LUTHERAN CH NATIVI | 3031 | 215 | 8 | 0 | 9 | 1 | 8 | 4 | 0 | | | | | | | |
| 55.1 LIMESTONE 2 | 3103 | 366 | 2 | 4 | 7 | 1 | 5 | 1 | 0 | | | | | | | |
| 56.2 LIMESTONE 3 | 2232 | 368 | | | | | | | | | | | | | | |
| 57.1 LIMESTONE 4 | 2734 | 371 | | | | | | | | | | | | | | |
| 58.1 N BUNCOMBE MID SCH | 1782 | 287 | | | | | | | | | | | | | | |
| 59.1 REEMS CREEK FIREDE | 3317 | 544 | | | | | | | | | | | | | | |
| 60.2 REYNOLDS FIRE DEPT | 982 | 117 | | | | | | | | | | | | | | |
| 60.4 COVENANT COMM CHUR | 1489 | 240 | | | | | | | | | | | | | | |
| 61.1 RICEVILLE 1 COMM C | 2378 | 429 | | | | | | | | | | | | | | |
| 62.1 RICEVILLE 2 | 2388 | 323 | 6 | 3 | 14 | 13 | 12 | 12 | 1 | | | | | | | |
| 63.1 SANDY MUSH COMM CT | 536 | 116 | | | | | | | | | | | | | | |
| 64.1 1ST BAPT SWANNANOA | 1943 | 199 | | | | | | | | | | | | | | |
| 65.1 SWANNANOA 2 | 2825 | 402 | | | | | | | | | | | | | | |
| 66.1 SWANNANOA 3 | 2197 | 215 | | | | | | | | | | | | | | |
| 67.1 WEAVERVILLE TOWNHA | 2218 | 742 | | | | | | | | | | | | | | |
| 68.1 WEST BUNCOMBE 1 | 3548 | 380 | | | | | | | | | | | | | | |

| | STATISTICS | | ASHEVILLE COUNCIL CITY OF ASHEVILLE | | | | | | | BILTMORE FOREST MAYOR TOWN OF BILTMORE FOREST | | BILTMORE FOREST COMMISSIONER TOWN OF BILTMORE FOREST | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | REGISTERED | VOTER TOTAL | BALLOTS | CAST TOTAL | Mark Cates | Saul Chase | Jan Davis | Lael Gray | Marc Hunt | Chris Pelly | WRITE-IN | F. Geo Gosmann | WRITE-IN | W. Char Grimes | E. Glenn Kelly | Doris P. Loomis | WRITE-IN |
| 681 W BUNCOMBE 1-B | 394 | 56 | | | | | | | | | | | | | | | |
| 69.1 WEST BUNCOMBE 2 | 2805 | 382 | | | | | | | | | | | | | | | |
| 70.1 WOODFIN COMM CENTE | 2434 | 237 | | | | | | | | | | | | | | | |
| 71.1 WOODLANDHILLSBAPTI | 3620 | 525 | 12 | 0 | 14 | 8 | 12 | 8 | 0 | | | | | | | | |
| OS BOE | 0 | 2354 | 379 | 139 | 670 | 811 | 933 | 858 | 26 | 17 | 3 | 17 | 18 | 18 | 0 |
| OS KENNILWORTH | 0 | 280 | 40 | 18 | 60 | 136 | 136 | 147 | 8 | 0 | 0 | 0 | 0 | 0 | 0 |
| OS N ASHVILLE | 0 | 1295 | 270 | 78 | 453 | 490 | 601 | 496 | 5 | 2 | 0 | 0 | 0 | 2 | 0 |
| OS S BUNCOMBE | 0 | 996 | 239 | 59 | 247 | 204 | 287 | 250 | 7 | 21 | 2 | 23 | 20 | 21 | 1 |
| OS W ASHVILLE | 0 | 809 | 160 | 52 | 252 | 293 | 352 | 275 | 9 | 0 | 0 | 0 | 0 | 0 | 0 |
| ABSENTEE | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| PROVISIONAL | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| TRANSFER | 0 | 41 | 2 | 4 | 9 | 11 | 14 | 11 | 2 | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTALS | 175726 | 33493 | 5263 | 1762 | 7703 | 7669 | 8760 | 8202 | 205 | 292 | 15 | 292 | 286 | 301 | 13 |

528

| | BLACK MOUNTAIN ALDERMAN TOWN OF BLACK MOUNTAIN | | | | | | | | | | | | MONTREAT COMMISSIONER TOWN OF MONTREAT | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Ruth Brandon | Guthrie Brown, Joan | Don Collins | Tom Gill | Larry B. Harris | Bob Pauly | Archie Perthiller, Jr. C. | Michael Sobol C. | Ryan Stone | (Maggie) Margaret Tuttle | Buzz Yeatman | WRITE-IN | D. Camp Mabel Marthal | McCaskill, John J. Jr. C. | WRITE-IN |
| 32.1 BLACK MOUNTAIN 1 | 0 | 2 | 9 | 5 | 6 | 3 | 0 | 0 | 2 | 1 | 5 | 0 | | | |
| 33.2 BLACK MTN PRIMARY | 74 | 62 | 310 | 78 | 86 | 89 | 74 | 144 | 138 | 210 | 30 | 3 | | | |
| 33.3 BLACK MTN ELEMENTA | 92 | 77 | 370 | 130 | 136 | 140 | 164 | 187 | 197 | 318 | 99 | 2 | | | |
| 34.1 BLACK MOUNTAIN 3 | 76 | 65 | 247 | 104 | 116 | 79 | 93 | 156 | 134 | 214 | 56 | 0 | | | |
| 35.1 BLACK MOUNTAIN 4 | 86 | 201 | 277 | 191 | 198 | 55 | 183 | 172 | 143 | 268 | 52 | 2 | | | |
| 36.1 BLACK MOUNTAIN 5 | | | | | | | | | | | | | 112 | 114 | 11 |
| OS BOE | 8 | 17 | 43 | 26 | 18 | 6 | 15 | 26 | 31 | 40 | 12 | 0 | 8 | 6 | 0 |
| OS KENNILWORTH | 4 | 10 | 3 | 6 | 8 | 4 | 2 | 2 | 3 | 7 | 3 | 1 | 0 | 0 | 0 |
| OS N ASHVILLE | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 |
| OS S BUNCOMBE | 2 | 2 | 1 | 1 | 2 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| OS W ASHVILLE | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| ABSENTEE | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| PROVISIONAL | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| TRANSFER | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTALS | 342 | 436 | 1262 | 541 | 570 | 376 | 532 | 688 | 651 | 1059 | 258 | 8 | 120 | 120 | 11 |

| | WEAVERVILLE COMMISSIONER TOWN OF WEAVERVILLE | | | | | | WOODFIN MAYOR TOWN OF WOODFIN | | WOODFIN ALDERMAN TOWN OF WOODFIN | | | | WOODFIN WATER AND SEWER DIST WOODFIN WATER DISTRICT | | | | | County Sales and Use Tax OVER17 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Walter | L. Curie | Doug Jackson | Gene Knoefel | Andrew Nagle | John V. Penley | WRITE-IN | M. Jerry Vehaun | WRITE-IN | (Jim) Jamesl | Honey Donald Hutchett, Jr. | Ronnie Lunsford | WRITE-IN | Robin Cape | W. Gassaway | Keith Sneyder | Shirley D. Wood | WRITE-IN | For | Against |
| 01.1 STEPHENS LEE CENTE | | | | | | | | | | | | | | | | | | | 161 | 59 |
| 02.1 MONTFORD COMM CTR | | | | | | | | | | | | | | | | | | | 467 | 119 |
| 03.1 ST MARKS LUTHERAN | | | | | | | | | | | | | | | | | | | 358 | 89 |
| 04.1 N ASHEVILLE COMM C | | | | | | | | | | | | | | | | | | | 269 | 123 |
| 05.1 ST EUGENES CHURCH | | | | | | | | | | | | | | 151 | 72 | 99 | 64 | 2 | 375 | 210 |
| 06.1 TRINITY PRESBYTERI | | | | | | | | | | | | | | | | | | | 227 | 119 |
| 07.1 KENILWORTH PRES CH | | | | | | | | | | | | | | | | | | | 302 | 99 |
| 08.2 SHILOH COMMUNITY C | | | | | | | | | | | | | | | | | | | 157 | 144 |
| 08.3 FAITH TABERNACLE C | | | | | | | | | | | | | | | | | | | 133 | 96 |
| 09.1 MURPHY-OAKLEY CENT | | | | | | | | | | | | | | | | | | | 245 | 209 |
| 10.1 W C REID REC CENTE | | | | | | | | | | | | | | | | | | | 120 | 62 |
| 11.1 ASHEVILLE SENIOR C | | | | | | | | | | | | | | | | | | | 124 | 44 |
| 12.1 HALL FLETCHER SCHO | | | | | | | | | | | | | | | | | | | 277 | 84 |
| 13.1 W ASHEVILLE CHURCH | | | | | | | | | | | | | | | | | | | 224 | 82 |
| 14.2 ASHEVILLE PRE-SCHO | | | | | | | | | | | | | | | | | | | 184 | 101 |
| 14.3 PAUL AMOS REC CENT | | | | | | | | | | | | | | | | | | | 71 | 56 |
| 15.1 VANCE ELEMENTARY | | | | | | | | | | | | | | | | | | | 315 | 148 |
| 16.2 W ASHEVILLE LIBRAR | | | | | | | | | | | | | | | | | | | 293 | 172 |
| 17.1 BETHISRAEL SYNAGOG | | | | | | | | | | | | | | | | | | | 256 | 102 |
| 18.2 TC ROBERSON HIGH | | | | | | | | | | | | | | | | | | | 331 | 301 |
| 19.1 SKYLAND FIRE DEPT | | | | | | | | | | | | | | | | | | | 64 | 58 |
| 20.1 BOARD OF ELECTIONS | | | | | | | | | | | | | | | | | | | 91 | 38 |
| 21.1 HAW CREEK ELEMENTA | | | | | | | | | | | | | | | | | | | 341 | 250 |
| 22.2 IRA B JONES SCHOOL | | | | | | | | | | | | | | | | | | | 383 | 222 |
| 23.2 ASHEVILLE APOSTOLI | | | | | | | | | | | | | | | | | | | 46 | 32 |
| 23.3 EVERGREEN CHARTER | | | | | | | | | | | | | | | | | | | 199 | 135 |
| 24.1 CROSSROADS ASSEMBL | | | | | | | | | | | | | | | | | | | 139 | 228 |
| 25.1 CHARLESCBELL SCHOO | | | | | | | | | | | | | | | | | | | 208 | 194 |
| 26.1 ASHEVILLE SCHOOL | | | | | | | | | | | | | | | | | | | 138 | 103 |
| 27.2 BEAVERDAM COMM CTR | | | | | | | | | | | | | | | | | | | 80 | 41 |
| 28.1 COVENANT REFORMED | | | | | | | | | | | | | | 1 | 1 | 1 | 0 | 1 | 240 | 85 |
| 29.2 NEWHOPE PRESBYTERI | | | | | | | | | | | | | | | | | | | 398 | 202 |
| 30.2 AVERYS CREEK ELEM | | | | | | | | | | | | | | | | | | | 83 | 138 |
| 30.3 AVERYS CREEK CENTE | | | | | | | | | | | | | | | | | | | 96 | 195 |
| 31.1 BILT FOREST TWN HA | | | | | | | | | | | | | | | | | | | 182 | 108 |
| 32.1 BLACK MOUNTAIN 1 | | | | | | | | | | | | | | | | | | | 102 | 132 |
| 33.2 BLACK MTN PRIMARY | | | | | | | | | | | | | | | | | | | 175 | 286 |
| 33.3 BLACK MTN ELEMENTA | | | | | | | | | | | | | | | | | | | 285 | 397 |

| | WEAVERVILLE COMMISSIONER TOWN OF WEAVERVILLE | | | | | | WOODFIN MAYOR TOWN OF WOODFIN | | WOODFIN ALDERMAN TOWN OF WOODFIN | | | | WOODFIN WATER AND SEWER DIST WOODFIN WATER DISTRICT | | | | | County Sales and Use Tax OVER17 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Walter | L. Curtie | Doug Jackson | Gene Knoefel | Andrew Nagle | John V. Penley | WRITE-IN | M. Jerry Vehaun | WRITE-IN | (Jim) James Angel | Donald Hon. | Honeycutt, Jr. | Ronnie Lunsford | WRITE-IN | Robin Cape | Sarah Gassaway | W. Keith Snyder | Shirley D. Wood | WRITE-IN | For | Against |
| 34.1 BLACK MOUNTAIN 3 | | | | | | | | | | | | | | | | | | | | 209 | 258 |
| 35.1 BLACK MOUNTAIN 4 | | | | | | | | | | | | | | | | | | | | 349 | 282 |
| 36.1 BLACK MOUNTAIN 5 | | | | | | | | | | | | | | | | | | | | 158 | 135 |
| 37.1 GARREN CREEK FD | | | | | | | | | | | | | | | | | | | | 66 | 178 |
| 38.2 CANECREEK MIDDLE S | | | | | | | | | | | | | | | | | | | | 71 | 162 |
| 38.3 TRINITY OF FAIRVIE | | | | | | | | | | | | | | | | | | | | 111 | 334 |
| 39.2 FAIRVIEW VFD | | | | | | | | | | | | | | | | | | | | 112 | 192 |
| 39.3 FAIRVIEW COMM CTR | | | | | | | | | | | | | | | | | | | | 98 | 250 |
| 40.2 FLAT CREEK | | | | | | | | | | | | | | | | | | | | 110 | 265 |
| 41.1 FRENCHBROAD FIREDE | | | | | | | | | | | | | | | | | | | | 71 | 183 |
| 42.1 HAZEL1EMMAELEMENTA | | | | | | | | 2 | 2 | 2 | 2 | 2 | 0 | | | | | | | 55 | 105 |
| 43.2 HAZEL2JOHNSTONSCHO | | | | | | | | | | | | | | | | | | | | 55 | 86 |
| 44.1 LOWER HOMINY 1 | | | | | | | | | | | | | | | | | | | | 253 | 355 |
| 45.1 ENKA MIDDLE SCHOOL | | | | | | | | | | | | | | | | | | | | 102 | 274 |
| 46.1 LOWER HOMINY 3 | | | | | | | | | | | | | | | | | | | | 77 | 140 |
| 47.1 UPPER HOMINY 1 | | | | | | | | | | | | | | | | | | | | 109 | 367 |
| 48.1 HOMINY VALLEY ELEM | | | | | | | | | | | | | | | | | | | | 117 | 240 |
| 49.1 UPPER HOMINY 3 | | | | | | | | | | | | | | | | | | | | 96 | 310 |
| 50.1 IVY 1 | | | | | | | | | | | | | | | | | | | | 48 | 190 |
| 51.2 N WINDY RIDGE SCHO | | | | | | | | | | | | | | | | | | | | 73 | 142 |
| 52.1 LEICESTER 1 | | | | | | | | | | | | | | | | | | | | 76 | 326 |
| 53.1 LEICESTER 2 | | | | | | | | | | | | | | | | | | | | 124 | 294 |
| 54.2 LUTHERAN CH NATIVI | | | | | | | | | | | | | | | | | | | | 86 | 129 |
| 55.1 LIMESTONE 2 | | | | | | | | | | | | | | | | | | | | 147 | 219 |
| 56.2 LIMESTONE 3 | | | | | | | | | | | | | | | | | | | | 141 | 227 |
| 57.1 LIMESTONE 4 | | | | | | | | | | | | | | | | | | | | 146 | 225 |
| 58.1 N BUNCOMBE MID SCH | 0 | 2 | 0 | 4 | 4 | 1 | | | | | | | | | | | | | | 102 | 184 |
| 59.1 REEMS CREEK FIREDE | 44 | 44 | 59 | 37 | 24 | 0 | | | | | | | | | | | | | | 222 | 321 |
| 60.2 REYNOLDS FIRE DEPT | | | | | | | | | | | | | | | | | | | | 55 | 62 |
| 60.4 COVENANT COMM CHUR | | | | | | | | | | | | | | | | | | | | 103 | 137 |
| 61.1 RICEVILLE 1 COMM C | | | | | | | | | | | | | | | | | | | | 182 | 247 |
| 62.1 RICEVILLE 2 | | | | | | | | | | | | | | | | | | | | 141 | 182 |
| 63.1 SANDY MUSH COMM CT | | | | | | | | | | | | | | | | | | | | 47 | 69 |
| 64.1 1ST BAPT SWANNANOA | | | | | | | | | | | | | | | | | | | | 51 | 148 |
| 65.1 SWANNANOA 2 | | | | | | | | | | | | | | | | | | | | 193 | 209 |
| 66.1 SWANNANOA 3 | | | | | | | | | | | | | | | | | | | | 125 | 89 |
| 67.1 WEAVERVILLE TOWNHA | 382 | 382 | 373 | 310 | 437 | 11 | | | | | | | | | | | | | | 337 | 394 |
| 68.1 WEST BUNCOMBE 1 | | | | | | | | 8 | 4 | 5 | 8 | 8 | 4 | | | | | | | 83 | 297 |

| | WEAVERVILLE COMMISSIONER TOWN OF WEAVERVILLE | | | | | | WOODFIN MAYOR TOWN OF WOODFIN | | WOODFIN ALDERMAN TOWN OF WOODFIN | | | | WOODFIN WATER AND SEWER DIST WOODFIN WATER DISTRICT | | | | | County Sales and Use Tax OVER17 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Walter | C. Curtis | Doug Jackson | Gene Knoefel | Andrew Nagle | John V. Penley | M. Jerry Vehaun | WRITE-IN | (Jim) Angel | Hon. Donald Jr. Hord | Ronnie Lunsford | WRITE-IN | Robin Capehart | Sashay Gass | Keith S. Snyder | Shirley D. Woody | WRITE-IN | For | Against |
| 681 W BUNCOMBE 1-B | | | | | | | | | | | | | | | | | | 7 | 49 |
| 69.1 WEST BUNCOMBE 2 | | | | | | | 30 | 7 | 28 | 25 | 32 | 15 | | | | | | 116 | 266 |
| 70.1 WOODFIN COMM CENTE | | | | | | | 197 | 4 | 148 | 168 | 153 | 25 | 123 | 137 | 118 | 97 | 2 | 109 | 127 |
| 71.1 WOODLANDHILLSBAPTI | 45 | 40 | 59 | 59 | 43 | 1 | 57 | 0 | 52 | 54 | 53 | 3 | 2 | 0 | 0 | 0 | 0 | 234 | 291 |
| OS BOE | 13 | 14 | 11 | 11 | 17 | 4 | 18 | 0 | 14 | 15 | 15 | 0 | 27 | 19 | 18 | 20 | 0 | 1521 | 817 |
| OS KENNILWORTH | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 172 | 105 |
| OS N ASHVILLE | 19 | 12 | 33 | 31 | 22 | 0 | 44 | 4 | 36 | 34 | 40 | 8 | 108 | 56 | 64 | 31 | 1 | 833 | 453 |
| OS S BUNCOMBE | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 564 | 425 |
| OS W ASHVILLE | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 2 | 2 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 451 | 354 |
| ABSENTEE | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| PROVISIONAL | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| TRANSFER | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 27 | 14 |
| TOTALS | 503 | 495 | 536 | 452 | 547 | 17 | 358 | 21 | 287 | 308 | 305 | 55 | 413 | 285 | 300 | 213 | 6 | 16874 | 16371 |

OFFICE: **Biltmore Forest Commissioner** TOTAL WRITE-IN VOTES: **13**
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
MISCELLANEOUS VOTES: **13**

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OFFICE: **Black Mountain Alderman** TOTAL WRITE-IN VOTES: **8**
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
MISCELLANEOUS VOTES: **8**

---

OFFICE: **Montreat Commissioner** TOTAL WRITE-IN VOTES: **11**
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
MISCELLANEOUS VOTES: **11**

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OFFICE: **Weaverville Commissioner** TOTAL WRITE-IN VOTES: **17**
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
MISCELLANEOUS VOTES: **17**

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OFFICE: **Woodfin Mayor** TOTAL WRITE-IN VOTES: **21**

NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
MISCELLANEOUS VOTES: **21**

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OFFICE: **Woodfin Alderman** TOTAL WRITE-IN VOTES: **55**

NAME: **Jose Acevedo** WRITE-IN VOTES: **16**
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
MISCELLANEOUS VOTES: **39**

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OFFICE: **Woodfin Water and Sewer District** TOTAL WRITE-IN VOTES: **6**

NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
NAME: WRITE-IN VOTES:
MISCELLANEOUS VOTES: **6**

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# GENERAL ELECTION
# RECOUNT
November 8, 2011
ABSTRACT OF VOTES
FOR
ASHEVILLE CITY COUNCIL
STATE OF NORTH CAROLINA

## INSTRUCTIONS

THREE COPIES are to be made. One copy is to be signed by the County Board of Elections and delivered by them, when the canvass is concluded, to the City Clerk (GS 163-300). One copy is to be retained by the County Board of Elections. One copy is to be mailed on canvass day to the Chairman of the State Board of Elections, Raleigh, North Carolina (GS 163-182.6).

**STATE OF NORTH CAROLINA**
**COUNTY OF BUNCOMBE**

The County Board of Elections for said county, having opened, canvassed, and judicially determined the original returns of the election in the precincts in this county, held as above stated, do hereby certify that the above is a true abstract thereof, and contains the number of legal ballots cast in each precinct for each office or referendum named, the name of each person or choice voted for, their party affiliation (where applicable), and the number of votes cast for each person or choice for the item named.

This is the 18th day of November 2011

This day personally appeared before me, JONES BYRD
Chairman of the County Board of Elections, who being duly sworn, says the abstract of votes herein contained is true and correct, according to the returns made to said Board.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed My notarial seal this the 18 day of NOVEMBER, 2011.

(Seal)

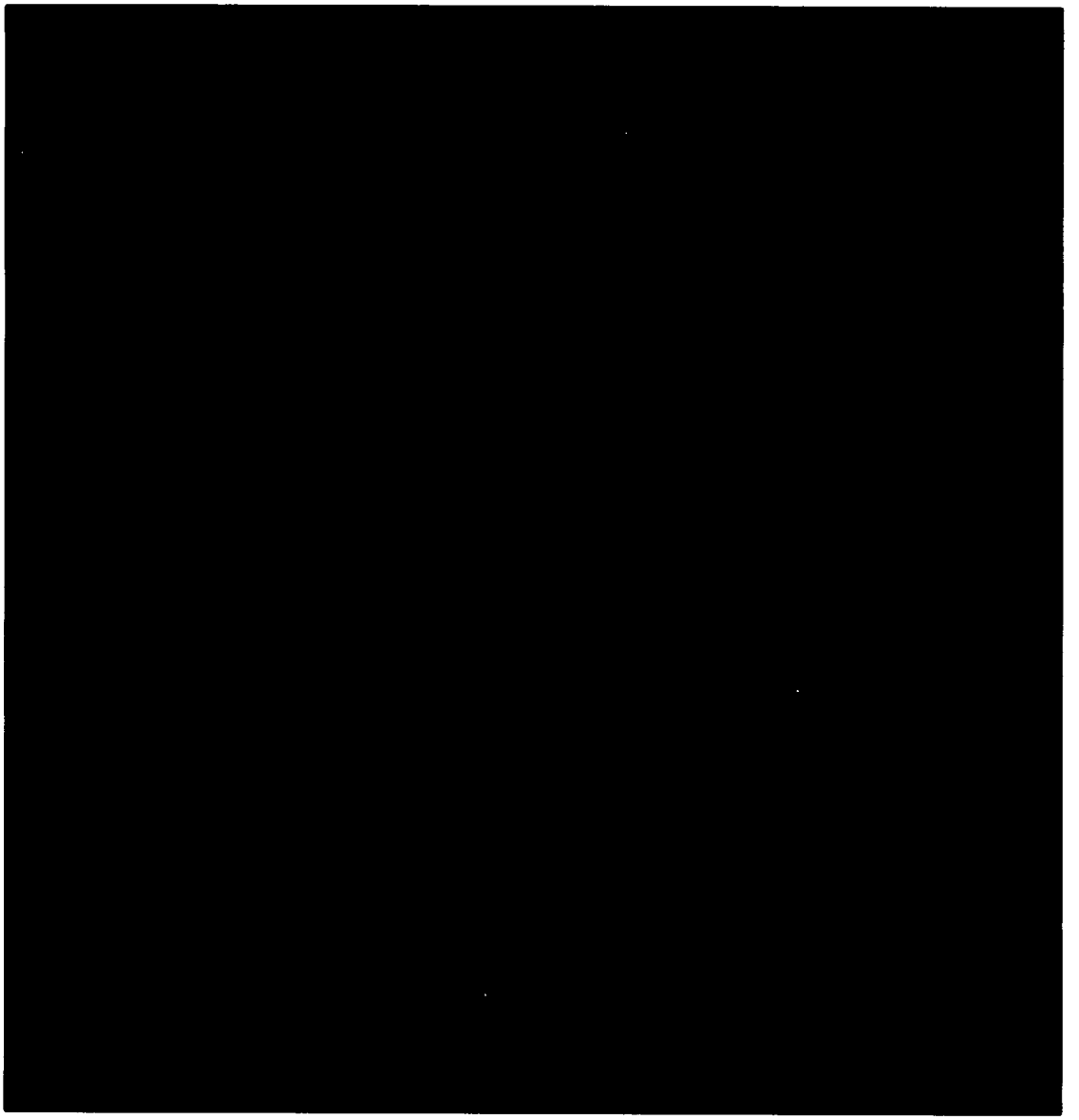
My Co[redacted]on (if any) Expires: 7/11/16

| | STATISTICS | | ASHEVILLE COUNCIL CITY OF ASHEVILLE | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | REGISTERED | VOTERS - TOTAL | BALLOTS | CAST - TOTAL | Mark Cates | Saul Chase | Jan Davis | Lael Gray | Marc Hunt | Chris Pelly | WRITE-IN |
| 01.1 STEPHENS LEE CENTE | 1914 | 223 | | | 56 | 25 | 115 | 121 | 137 | 124 | 8 |
| 02.1 MONTFORD COMM CTR | 3384 | 598 | | | 76 | 59 | 256 | 461 | 414 | 356 | 0 |
| 03.1 ST MARKS LUTHERAN | 2686 | 452 | | | 96 | 67 | 167 | 311 | 323 | 297 | 2 |
| 04.1 N ASHEVILLE COMM C | 1448 | 396 | | | 126 | 42 | 218 | 214 | 246 | 197 | 6 |
| 05.1 ST EUGENES CHURCH | 2474 | 596 | | | 266 | 44 | 382 | 256 | 328 | 248 | 9 |
| 06.1 TRINITY PRESBYTERI | 1491 | 356 | | | 127 | 28 | 182 | 178 | 185 | 248 | 5 |
| 07.1 KENILWORTH PRES CH | 1781 | 411 | | | 95 | 41 | 155 | 282 | 295 | 284 | 2 |
| 08.2 SHILOH COMMUNITY C | 2566 | 303 | | | 165 | 60 | 183 | 109 | 113 | 124 | 5 |
| 08.3 FAITH TABERNACLE C | 2392 | 234 | | | 63 | 54 | 106 | 87 | 99 | 109 | 7 |
| 09.1 MURPHY-OAKLEY CENT | 2905 | 459 | | | 200 | 74 | 227 | 204 | 225 | 234 | 13 |
| 10.1 W C REID REC CENTE | 1594 | 186 | | | 50 | 40 | 119 | 94 | 94 | 98 | 1 |
| 11.1 ASHEVILLE SENIOR C | 1482 | 171 | | | 31 | 31 | 76 | 109 | 106 | 103 | 4 |
| 12.1 HALL FLETCHER SCHO | 1962 | 363 | | | 64 | 38 | 141 | 247 | 278 | 243 | 7 |
| 13.1 W ASHEVILLE CHURCH | 2256 | 310 | | | 78 | 30 | 137 | 204 | 220 | 183 | 8 |
| 14.2 ASHEVILLE PRE-SCHO | 2119 | 289 | | | 115 | 52 | 162 | 140 | 173 | 163 | 3 |
| 14.3 PAUL AMOS REC CENT | 1247 | 129 | | | 52 | 22 | 73 | 50 | 69 | 61 | 0 |
| 15.1 VANCE ELEMENTARY | 2150 | 467 | | | 118 | 40 | 213 | 280 | 323 | 287 | 2 |
| 16.2 W ASHEVILLE LIBRAR | 2630 | 466 | | | 167 | 74 | 213 | 248 | 277 | 258 | 7 |
| 17.1 BETHISRAEL SYNAGOG | 1809 | 363 | | | 114 | 53 | 202 | 187 | 208 | 166 | 3 |
| 18.2 TC ROBERSON HIGH | 4267 | 638 | | | 364 | 78 | 395 | 219 | 293 | 236 | 9 |
| 19.1 SKYLAND FIRE DEPT | 1136 | 125 | | | 76 | 11 | 78 | 32 | 44 | 52 | 0 |
| 20.1 BOARD OF ELECTIONS | 1021 | 132 | | | 40 | 24 | 59 | 84 | 79 | 72 | 2 |
| 21.1 HAW CREEK ELEMENTA | 2587 | 599 | | | 232 | 67 | 302 | 283 | 303 | 428 | 4 |
| 22.2 IRA B JONES SCHOOL | 2210 | 612 | | | 249 | 55 | 377 | 277 | 357 | 302 | 8 |
| 23.2 ASHEVILLE APOSTOLI | 401 | 79 | | | | | | | | | |
| 23.3 EVERGREEN CHARTER | 976 | 338 | | | 133 | 15 | 194 | 143 | 148 | 223 | 5 |
| 24.1 CROSSROADS ASSEMBL | 2268 | 368 | | | 202 | 54 | 249 | 109 | 142 | 141 | 7 |
| 25.1 CHARLESCBELL SCHOO | 2575 | 410 | | | 182 | 51 | 213 | 169 | 201 | 253 | 8 |
| 26.1 ASHEVILLE SCHOOL | 1611 | 242 | | | 97 | 36 | 138 | 106 | 136 | 112 | 3 |
| 27.2 BEAVERDAM COMM CTR | 838 | 121 | | | | | | | | | |
| 28.1 COVENANT REFORMED | 2801 | 331 | | | 92 | 40 | 163 | 188 | 217 | 180 | 2 |
| 29.2 NEWHOPE PRESBYTERI | 2719 | 608 | | | 306 | 81 | 360 | 238 | 292 | 285 | 5 |
| 30.2 AVERYS CREEK ELEM | 1612 | 221 | | | | | | | | | |
| 30.3 AVERYS CREEK CENTE | 2291 | 291 | | | | | | | | | |
| 31.1 BILT FOREST TWN HA | 1315 | 291 | | | | | | | | | |
| 32.1 BLACK MOUNTAIN 1 | 1802 | 234 | | | | | | | | | |
| 33.2 BLACK MTN PRIMARY | 1210 | 466 | | | | | | | | | |
| 33.3 BLACK MTN ELEMENTA | 1939 | 691 | | | | | | | | | |

| | STATISTICS | | ASHEVILLE COUNCIL CITY OF ASHEVILLE | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | REGISTERED | VOTERS - TOTAL | BALLOTS | CAST - TOTAL | Mark Cates | Saul Chase | Jan Davis | Lael Gray | Marc Hunt | Chris Pelly | WRITE-IN |
| 34.1 BLACK MOUNTAIN 3 | 1240 | 476 | | | | | | | | | |
| 35.1 BLACK MOUNTAIN 4 | 1740 | 642 | | | | | | | | | |
| 36.1 BLACK MOUNTAIN 5 | 1890 | 295 | | | | | | | | | |
| 37.1 GARREN CREEK FD | 1343 | 244 | | | | | | | | | |
| 38.2 CANECREEK MIDDLE S | 1515 | 233 | | | | | | | | | |
| 38.3 TRINITY OF FAIRVIE | 2980 | 446 | | | | | | | | | |
| 39.2 FAIRVIEW VFD | 1641 | 304 | | | | | | | | | |
| 39.3 FAIRVIEW COMM CTR | 2133 | 349 | | | | | | | | | |
| 40.2 FLAT CREEK | 3511 | 375 | | | | | | | | | |
| 41.1 FRENCHBROAD FIREDE | 2727 | 254 | | | | | | | | | |
| 42.1 HAZEL1EMMAELEMENTA | 2047 | 160 | | | | | | | | | |
| 43.2 HAZEL2JOHNSTONSCHO | 1578 | 141 | 0 | 0 | 0 | 1 | 1 | 1 | 0 | | |
| 44.1 LOWER HOMINY 1 | 3787 | 610 | 110 | 18 | 108 | 68 | 71 | 71 | 2 | | |
| 45.1 ENKA MIDDLE SCHOOL | 3694 | 376 | 3 | 1 | 4 | 1 | 3 | 1 | 0 | | |
| 46.1 LOWER HOMINY 3 | 1349 | 217 | | | | | | | | | |
| 47.1 UPPER HOMINY 1 | 3962 | 476 | | | | | | | | | |
| 48.1 HOMINY VALLEY ELEM | 3396 | 357 | | | | | | | | | |
| 49.1 UPPER HOMINY 3 | 3804 | 406 | | | | | | | | | |
| 50.1 IVY 1 | 1567 | 238 | | | | | | | | | |
| 51.2 N WINDY RIDGE SCHO | 1919 | 215 | | | | | | | | | |
| 52.1 LEICESTER 1 | 3383 | 403 | | | | | | | | | |
| 53.1 LEICESTER 2 | 2695 | 418 | | | | | | | | | |
| 54.2 LUTHERAN CH NATIVI | 3031 | 215 | 8 | 0 | 9 | 1 | 8 | 4 | 0 | | |
| 55.1 LIMESTONE 2 | 3103 | 366 | 2 | 4 | 7 | 1 | 5 | 1 | 0 | | |
| 56.2 LIMESTONE 3 | 2232 | 368 | | | | | | | | | |
| 57.1 LIMESTONE 4 | 2734 | 371 | | | | | | | | | |
| 58.1 N BUNCOMBE MID SCH | 1782 | 287 | | | | | | | | | |
| 59.1 REEMS CREEK FIREDE | 3317 | 544 | | | | | | | | | |
| 60.2 REYNOLDS FIRE DEPT | 982 | 117 | | | | | | | | | |
| 60.4 COVENANT COMM CHUR | 1489 | 240 | | | | | | | | | |
| 61.1 RICEVILLE 1 COMM C | 2378 | 429 | | | | | | | | | |
| 62.1 RICEVILLE 2 | 2388 | 323 | 6 | 3 | 14 | 13 | 12 | 12 | 1 | | |
| 63.1 SANDY MUSH COMM CT | 536 | 116 | | | | | | | | | |
| 64.1 1ST BAPT SWANNANOA | 1943 | 199 | | | | | | | | | |
| 65.1 SWANNANOA 2 | 2825 | 402 | | | | | | | | | |
| 66.1 SWANNANOA 3 | 2197 | 215 | | | | | | | | | |
| 67.1 WEAVERVILLE TOWNHA | 2218 | 742 | | | | | | | | | |
| 68.1 WEST BUNCOMBE 1 | 3548 | 380 | | | | | | | | | |

| | STATISTICS | | ASHEVILLE COUNCIL CITY OF ASHEVILLE | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | REGISTERED | VOTERS - TOTAL | BALLOTS | CAST - TOTAL | Mark Cates | Saul Chase | Jan Davis | Lael Gray | Marc Hunt | Chris Pelly | WRITE-IN |
| 681 W BUNCOMBE 1-B | | 394 | | 56 | | | | | | | |
| 69.1 WEST BUNCOMBE 2 | | 2805 | | 382 | | | | | | | |
| 70.1 WOODFIN COMM CENTE | | 2434 | | 237 | | | | | | | |
| 71.1 WOODLANDHILLSBAPTI | | 3620 | | 525 | 12 | 0 | 14 | 8 | 12 | 8 | 0 |
| OS BOE | | 0 | | 2354 | 379 | 139 | 670 | 811 | 933 | 858 | 26 |
| OS KENNILWORTH | | 0 | | 280 | 40 | 18 | 60 | 135 | 136 | 147 | 8 |
| OS N ASHVILLE | | 0 | | 1295 | 270 | 78 | 453 | 490 | 601 | 496 | 5 |
| OS S BUNCOMBE | | 0 | | 996 | 239 | 59 | 246 | 203 | 287 | 250 | 7 |
| OS W ASHVILLE | | 0 | | 809 | 160 | 52 | 252 | 293 | 352 | 275 | 9 |
| ABSENTEE | | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| PROVISIONAL | | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| TRANSFER | | 0 | | 41 | 2 | 4 | 9 | 11 | 14 | 11 | 2 |
| TOTALS | | 175726 | | 33493 | 5263 | 1762 | 7701 | 7666 | 8760 | 8202 | 205 |

3701
7666
35



# BUNCOMBE COUNTY

# CITY OF ASHEVILLE

# CITY COUNCIL

# MINUTES

# VOLUME: 89

# (DECEMBER 6, 2011 – SEPTEMBER 11, 2012)

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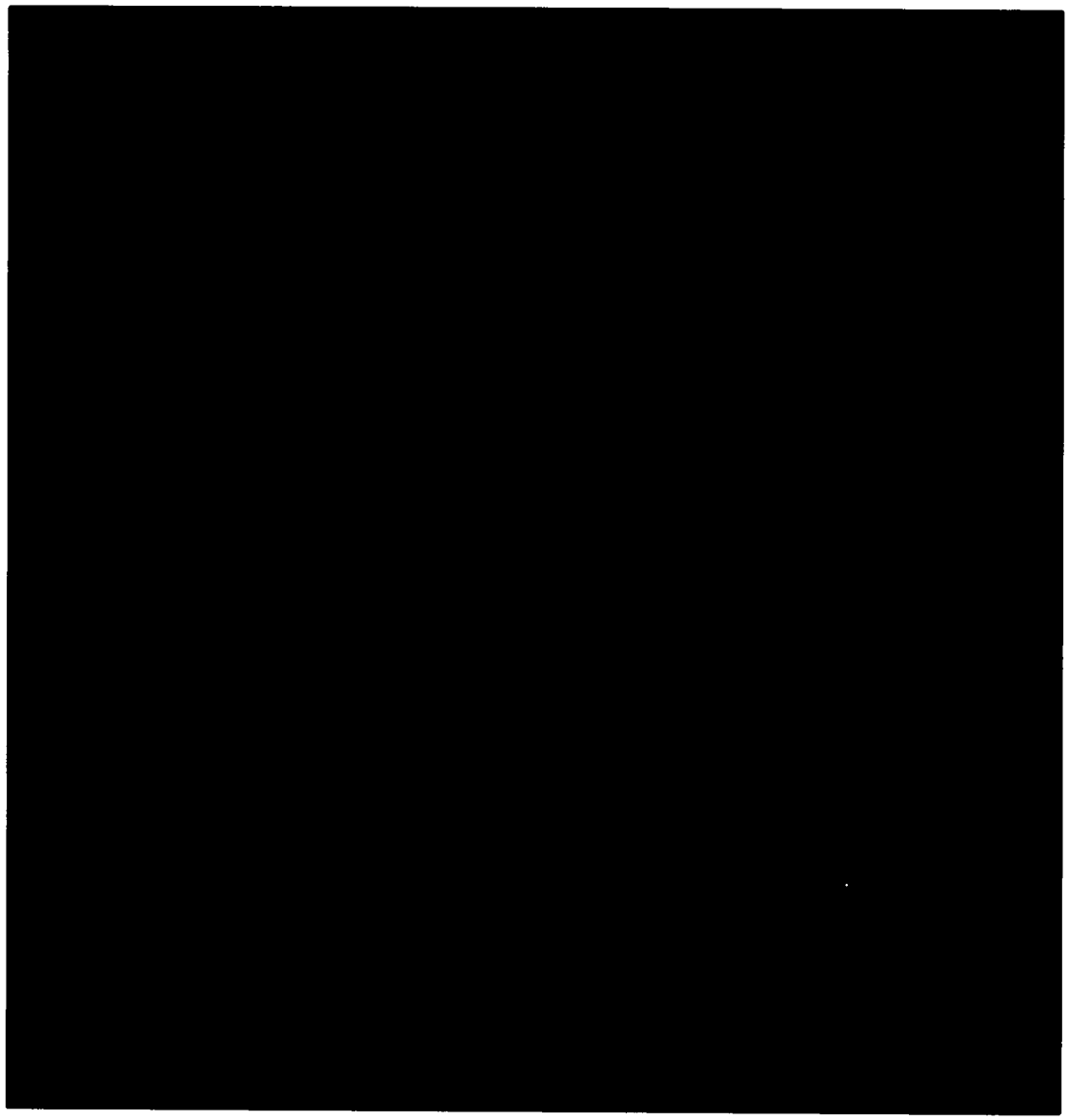

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Tuesday - December 6, 2011 – 5:00 p.m.

**ORGANIZATIONAL SESSION:**

Mayor Terry M. Bellamy welcomed everyone to the organizational session.

Mayor Bellamy led City Council in the Pledge of Allegiance.

Mayor Bellamy then introduced the Reverend Mark Ward from the Unitarian Universalist Church of Asheville and the Reverend Wes Austin from Abernethy United Methodist Church who both gave an invocation.

The Honorable J. Calvin Hill, Chief District Court Judge of the Buncombe County District Court, administered the Oath of Office to the following, who after sworn (or affirmed), thanked family and friends for their support:

Council Member Jan B. Davis
Council Member Marc W. Hunt
Council Member Christopher A. Pelly

**RESOLUTION NO. 11-239 - RESOLUTION OF APPRECIATION FOR BROWNIE W. NEWMAN**

Mayor Bellamy read the resolution.

Resolution No. 11-239 was adopted by acclamation.

Mayor Bellamy thanked Mr. Newman for his service to Asheville and presented him with the resolution, a plaque, his name plate and a City pen.

Mr. Newman thanked the public and his family for allowing him to serve. He also thanked City staff and City Council for their professionalism and dedication to the citizens of Asheville.

**RESOLUTION BOOK NO. 34 - PAGE 206**

**RESOLUTION NO. 11-240 - RESOLUTION OF APPRECIATION FOR WILLIAM A. RUSSELL JR.**

Mayor Bellamy read the resolution.

Resolution No. 11-240 was adopted by acclamation.

Mayor Bellamy thanked Mr. Russell for his service to Asheville and presented him with the resolution, a plaque, his name plate and a City pen.

Mr. Russell thanked the public and his family for allowing him to serve. He also thanked City staff and City Council for their professionalism and dedication to the citizens of Asheville.

**RESOLUTION BOOK NO. 34 - PAGE 207**

**ELECTION OF VICE-MAYOR**

Councilman Davis nominated Councilwoman Manheimer as Vice-Mayor of the City of Asheville. Councilman Smith seconded the nomination.

After hearing no more nominations, Mayor Bellamy closed the floor for nominations.

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Mayor Bellamy called for a vote, resulting in Councilwoman Manheimer being appointed as Vice-Mayor unanimously.

**COMMENTS**

Councilman Davis, Councilman Hunt and Councilman Pelly each expressed their honor to be allowed to serve the citizens, appreciated the support of their family and friends, and looked forward to working for and with City residents.

Mayor Bellamy said that this has begun a new chapter in Asheville's history and looked forward to working with the new Council and our community.

**ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 5:50 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – December 13, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Vice-Mayor Manheimer gave the invocation.

**I. PROCLAMATIONS:**

**A. EMPLOYEE RECOGNITIONS**

APD Officer Scott Muse; APD Sgt. Joseph Johnson; Special Agent Derek Wiles from the Secretary of State's Office, Enforcement Division; TFO Ray Richardson – Durham ABC Agent; Special Agent Renee Davis; Special Agent DeeDee Jones; SAC John Lynch, N.C. Secretary of State's Office; and SA Jahaira Torrens – ICE – Dept. of Homeland Security, Raleigh Office – For their work associated with an APD Counterfeit Ring of stereo equipment; (2) APD Sgt. Joseph Silberman – Awarded the Forensic Interviewer Certification; (3) Fire Marshal Wayne Hamilton – Achieved the designation as a Certified Fire Investigator; and (4) Michelle Massey-Smith – Awarded the 2011 N.C. American Water Works Association Water Distribution Operator of the Year.

Mayor Bellamy thanked the employees on what they do on behalf of the City of Asheville and City Council. She was proud of City staff and looked forward to highlighting more accomplishments.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 22, 2011, AND DECEMBER 6, 2011**

**B. RESOLUTION NO. 11-234 - RESOLUTION AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT FOR VARIOUS CAPITAL PROJECTS AND ACQUISITIONS TO BE DELIVERED IN FISCAL YEAR 2012 AS WELL AS THE REFINANCING OF EXISTING DEBT AND SETTING THE PUBLIC HEARING FOR THE TRANSACTION ON JANUARY 10, 2012**

Summary: The consideration of resolution authorizing the negotiation of an installment financing contract for various capital projects and acquisitions to be delivered in FY 2012 as well as the refinancing of existing debt and setting the public hearing for the transaction on January 10, 2012.

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On October 25, 2011, the Asheville City Council approved a resolution directing the City Manager and Finance Director to pursue debt financing for capital projects and refinancing existing debt in FY 2012, and to appoint bond counsel and the managing underwriter for the transaction. The components of the debt issuance include: (1) $20.1 million in "new money" for Council approved capital projects authorized as part of the FY 2012 and FY 2011 Budgets, (2) $14.1 million for the takeout of the interim note on the 51 Biltmore Parking Deck project and (3) $10.8 million for the refinancing of some existing debt to achieve financial savings.

The debt will likely be issued as Limited Obligation Bonds, also commonly known as Certificates of Participation. This form of obligation has been used previously by the City to construct and renovate the Municipal and Water Maintenance Buildings and Grove Arcade in 1997 and two fire stations in 2006. These types of obligations are limited obligations of the City, payable solely from currently budgeted appropriations of the City.

As a next step in the process, staff is seeking City Council consideration of a resolution authorizing the negotiation of an installment financing contract for the purpose described above. The resolution also authorizes the City to make application to the Local Government Commission for approval of the transaction, makes the necessary findings required by the Local Government Commission and sets the public hearing for the matter on January 10, 2012.

After the public hearing on January 10, staff anticipates returning to City Council for final consideration of the installment financing contract on February 28, 2012 and closing on the transaction in late March 2012.

This action supports the City of Asheville's goal to operate the City to the highest level of fiscal responsibility by enhancing its commitment to infrastructure maintenance and capital improvements.

Pros:

- Allows the City to move forward with the FY 2012 debt financing while complying with all applicable statutes and regulations.
- Refunding of existing debt results in financial savings and the reinvestment of those savings in the CIP.

Con:

- None noted.

The total amount projected for identified capital projects and refinancing is approximately $45 million. The resolution authorizes the City to negotiate an installment financing contract in a principal amount not to exceed $50 million in the event that project estimates change between the time the resolution is approved and the installment financing contract is executed.

The projected annual debt service costs associated with the transaction range from $5.28 million to $1.44 million through 2032. The General Fund portion of the debt service, including projects funded through the "Green CIP," ranges from $3.64 million to $550,000 during that same time. The range of annual debt service payments over the life of the transaction is a function of several factors - the final payoff in 2021 of the debt being refinanced and components of the "new money" projects that are being financed over their useful lives of 5, 10 and 20 years. The repayment of the "new money" debt issuance is incorporated in the debt management plan through the capacity being generated by the retirement of existing debt and a portion of the savings generated by the refunding. The refinancing of existing debt, at current market rates, is projected to produce about $1 million in cash flow savings through 2021.

Staff recommends that City Council approve the resolution as proposed.

**RESOLUTION BOOK NO. 34 – PAGE 208**

**C. RESOLUTION NO. 11-235 - RESOLUTION ADOPTING THE 2012 CITY COUNCIL MEETING SCHEDULE**

**RESOLUTION BOOK NO. 34 – PAGE 214**

**D. ORDINANCE NO. 4038 - BUDGET AMENDMENT FOR HARVEST HOUSE AND SENIOR OPPORTUNITY CENTER FROM THE STATE OF N.C. DEPT. OF HEALTH & HUMAN SERVICES THROUGH THE SENIOR CENTER GENERAL PURPOSE FUNDING**

Summary: The consideration of a budget amendment in the amount of $12,205 for Senior Opportunity Center and $12,205 for Harvest House for an appropriation from the State of N.C., Dept. of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding.

Funds will be used at the Senior Opportunity Center to 1) replace cabinets, countertops and flooring in kitchen, 2) upgrade facility lighting, and 3) purchase program and facility equipment. The allocation requires a 25% local match which will be provided via in-kind services of staff time to manage the project.

Funds will be used at Harvest House to 1) replace windows, ceiling tiles and bathroom floor tiles, 2) install ADA accessible interior facility doors handles, and 3) purchase program and facility equipment. This allocation also requires a 25% local match which will be provided via in-kind services of staff time to manage the project.

This action complies with the City Council Strategic Goal of fiscal responsibility in that it provides an alternative for enhancing the city's infrastructure maintenance. This action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it will 1) increase the level of service for indoor facilities to bring older facilities up to date before building new facilities, 2) increase department funding with alternative funding via grants, and 3) enhance the department's means to respond to identified programming priorities.

Pros:

- Facility improvements will address existing maintenance projects and improve accessibility.
- Equipment purchases will enhance the customer experience and expand programming opportunities provided

Con:

- None

The allocation will increase the City's General Fund budget by $24,410 in special project accounts designated for the Senior Opportunity Center and Harvest House. The 25% local match will be provided through in-kind services of staff time to manage the projects.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to establish a budget in the amount of 1) $12,205 for Senior Opportunity Center, and 2) $12,205 for Harvest House for facility improvements and equipment.

**ORDINANCE BOOK NO. 27 – PAGE 242**

**E. RESOLUTION NO. 11-236 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR A STATE MATCH TO PURCHASE TWO**

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**COMPRESSED NATURAL GAS REPLACEMENT BUSES FOR HENDERSON COUNTY'S TRANSIT SYSTEM**

**ORDINANCE NO. 4039 - BUDGET AMENDMENT TO PURCHASE TWO COMPRESSED NATURAL GAS REPLACEMENT BUSES ON BEHALF OF HENDERSON COUNTY'S TRANSIT SYSTEM**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) to provide a Section 5307 Capital Grant in the amount of $39,052 to be used for the State match to purchase two Compressed Natural Gas (CNG) replacement buses for Henderson County's transit system; and an associated budget amendment, in the amount of $390,523, to set up the project to purchase the subject buses.

As a result of the 2000 Census, the City of Asheville was reclassified from a non-urbanized area to an urbanized area with a population greater than 200,000 persons and now includes municipalities in Buncombe, Haywood, and Henderson counties. After the reclassification, Henderson County's transit system became part of the transit systems operating in the overall urbanized area. The Federal Transit Administration named the City of Asheville the designated recipient and as a result, the City of Asheville oversees all of the Federal funding administration. The City of Asheville and Henderson County have signed a sub-recipient agreement that specifies how the funds are disbursed. The City of Asheville is accountable to the Federal Transit Administration regarding the use of all Federal funds and owns all the capital items that Henderson County purchases with Federal funds.

The estimated total cost of the subject project is $390,523. Federal funds will provide 80% of the cost, State funds will provide 10% of the cost, and Henderson County will provide 10% of the cost. The City of Asheville performs all of the administrative tasks including the bidding process, requests for funding, review of documentation, and reporting. A contract is in place and City staff will order the buses as soon as the subject agreement is fully executed by both parties.

This action complies with the current City Council 2011-12 Strategic Operating Plan within the fiscal responsibility focus area by operating the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- The two new CNG buses will produce savings in maintenance and fuel costs.
- The Federal Transit Administration (FTA) provides 80% of the total estimated project cost.
- The North Carolina Department of Transportation (NCDOT) provides 10% of the total estimated project cost.
- Henderson County provides 10% of the total estimated project cost.
- There is **no** cost obligation for the City of Asheville other than administrative expenses.

Con:

- The City of Asheville is responsible for administrative expenses including staff time to oversee the project.

The total estimated project cost is $390,523, with 80% or $312,419 coming from Federal funds, 10% or $39,052 coming from State funds, and 10% or $39,052 coming from Henderson County. There is no direct fiscal impact to the City of Asheville, however the City's cost of administering the project is not recovered.

City staff recommends that City Council approve a resolution authorizing the City Manager to enter into an agreement with the NCDOT to provide a Section 5307 Capital Grant in

the amount of $39,052 to be used for the State match to purchase two Compressed Natural Gas (CNG) replacement buses for Henderson County's transit system; and adopt the associated budget amendment.

**RESOLUTION BOOK NO. 34 – PAGE 215**
**ORDINANCE BOOK NO. 27 – PAGE 244**

**F. RESOLUTION NO. 11-237 - RESOLUTION ACCEPTING COOPERS HAWK DRIVE AS A CITY-MAINTAINED STREET**

Summary: The consideration of a resolution to accept Coopers Hawk Drive as a city-maintained street in a recently annexed area of the City of Asheville.

Code of Ordinances sec. 7-15-1(f)(4)a requires that streets dedicated for public use be accepted by resolution of the City Council. The Coopers Hawk Drive Annexation area was approved by City Council on October 26, 2010, via Ordinance # 3911 with an effective date of November 30, 2011.

Coopers Hawk Drive from Ramble Way to its dead-end is a privately-maintained street that has an average width of 24 feet with 24-inch curb and gutter, a length of 0.57 mile, and a right-of-way width of 50 feet. A 5-foot back of curb sidewalk also exists along the entire length of the street.

As a part of the Annexation Services Plan, the subject street was inspected by Transportation Department staff and Public Works Department staff and the general street conditions were determined to be satisfactory and any maintenance issues will be handled as part of the City's routine maintenance funding.

Following City Council's approval of this resolution, the subject street will be added to the official Powell Bill List.

This action complies with the City Council 2011-12 Strategic Operating Plan by accepting street infra-structure to help support the healthy growth of the City. In addition, this action complies with the amended Annexation Services Plan that was approved by City Council on October 26, 2010 (Resolution # 10-233).

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help maintain the street.
- The street provides access and connectivity in a well-established residential community.

Cons:

- The initial cost to accept the street is about $800 in needed repairs.
- Powell Bill Funds will not cover 100% of the total cost to maintain the street.

The initial cost to accomplish needed repairs is about $800 and the funds are included in the current operating budget of the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the street.

Staff recommends that City Council approve a resolution to accept Coopers Hawk Drive as a city-maintained street.

**RESOLUTION BOOK NO. 34 – PAGE 216**

**G. ORDINANCE NO. 4040 - BUDGET AMENDMENT TO BUDGET U.S. DEPT. OF JUSTICE BULLETPROOF VEST PARTNERSHIP REIMBURSEMENT FUNDS**

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Summary: The consideration of a budget amendment, in the amount of $9,037, to appropriate Department of Justice Bulletproof Vest Partnership reimbursement funds for the purchase of police patrol safety equipment.

The Asheville Police Department currently participates in the Department of Justice Bulletproof Vest Partnership reimbursement program. This program is designed to off-set the tremendous cost involved in purchasing bulletproof vests for police officers. During the current fiscal year, the City of Asheville has collected $9,037 from the Department of Justice Bulletproof Vest Partnership reimbursement program. Adding these funds into the (police) Bulletproof Vest Partnership safety equipment budget line would assist in the purchase of additional bulletproof vests for Asheville Police officers.

This action conforms to the City Council's Strategic Operating Plan under Fiscal Responsibility. Goal I, Objective 1: Identify resources for strategic initiatives and create meaningful performance measures for programs and services.

Pro:

- Reimbursement revenue to cover the rising cost of bulletproof vests for Asheville Police Officers

Con:

- None noted.

This budget amendment is fully funded by federal grant funds; therefore there will be no additional expense to the City's budget.

City staff recommends City Council adopt the budget amendment in the amount of $9,037 to appropriate Department of Justice Bulletproof Vest Partnership reimbursement funds for the purchase of police safety equipment.

**ORDINANCE BOOK NO. 27 – PAGE 246**

**H. RESOLUTION NO. 11-238 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS FROM THE U.S. DEPT. OF JUSTICE, EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM**

**ORDINANCE NO. 4041 - BUDGET AMENDMENT TO ACCEPT GRANT FUNDS FROM THE U.S. DEPT. OF JUSTICE, EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM**

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under the Edward Byrne Memorial Justice Assistance Grant (JAG) program local solicitation; and the associated budget amendment in the amount of $71,706.

The City of Asheville has been awarded a grant from the Department of Justice in the amount of $71,706 to be shared with the Buncombe County Sheriff's Department. The Asheville Police Department (APD) and the Buncombe County Sheriff's Department have signed a Memorandum of Understanding with the City of Asheville serving as the administering agency. There is no local grant match and the City of Asheville's portion of the grant is $52,140. The purpose of the grant program is to replace outdated speed measuring devices and enhance traffic safety and speed enforcement efforts. The North Carolina Justice Academy, Speed Measuring Instrument Committee is systematically phasing-out the speed measuring devices currently used by APD. This decision has caused APD to seek grant funding to replace nearly $140,000 in APD speed measuring equipment that will no longer be approved for use in North Carolina.

This action conforms to the City Council's Strategic Operating Plan under Fiscal Responsibility. Goal I, Objective 1: Identify resources for strategic initiatives and create meaningful performance measures for programs and services.

Pros:

- Grant revenue will assist in replacing outdated speed measuring devices.
- Enhanced community traffic safety and speed enforcement capability.
- No local match required.

Con:

- None noted.

This budget amendment is fully funded with grant revenue with no local match required.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to enter into an agreement with the Department of Justice for the grant monies; and (2) the associated budget amendment, in the amount of $71,706.

**RESOLUTION BOOK NO. 34 – PAGE 218**
**ORDINANCE BOOK NO. 27 – PAGE 248**

**I. RESOLUTION NO. 11-241 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS FROM THE U.S. DEPT. OF JUSTICE COPS HIRING PROGRAM**

**ORDINANCE NO. 4042 - BUDGET AMENDMENT FROM THE U.S. DEPT. OF JUSTICE COPS HIRING PROGRAM**

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds from the U.S. Department of Justice COPS Hiring Program (CHP) in the amount of $711,255; and the associated budget amendment in the amount of $118,543 to budget funds that will be spent and reimbursed in FY 2011-12.

The City of Asheville has been awarded a grant from the U.S. Department of Justice COPS Hiring Program (CHP) in the amount of $711,255. This grant will allow the Asheville Police Department (APD) to hire 5 police officers to support ongoing crime prevention efforts at the walkover access to Hillcrest Apartments, suppress group and gang related violence in public housing areas in support of the Focused Deterrence strategy and engage youth though Police Activities League (PAL) activities. The grant amount will provide full funding for the salaries and fringe benefits for 5 police officers over three years. In the fourth year, the City will be responsible for absorbing this cost in its General Fund budget.

Between January and June 30, 2012, staff anticipates that the City will spend $118,543 for these five additional police officers. Therefore, the City's General Fund budget is being amended to reflect this expense and the associated grant revenue. The grant revenue and the expenses associated with the 5 officers for subsequent fiscal years will be included in those years' adopted General Fund budgets.

This action conforms to the City Council's Strategic Operating Plan under Fiscal Responsibility. Goal I, Objective 1: Identify resources for strategic initiatives and create meaningful performance measures for programs and services; and Safe. Goal I, Objective 1: Implement strategies to significantly improve public safety in neighborhoods in Asheville with the highest levels of crime.

Pro:

- Federal CHP monies to cover salary and fringe benefits for 5 police officers for three years.

Con:

- $215,000 increase to COA operating budget at the beginning of the fourth year.

In hiring the 5 police officers, the City of Asheville will receive $711,255 in salary and fringe benefits from the CHP over three years. The City will absorb $215,000 in salary and fringe benefits for the 5 police officers beginning in the fourth year.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to enter into an agreement with the Department of Justice COPS Hiring Program for the grant monies in the amount of $711,255; and (2) the associated budget amendment, in the amount of $118,543 to budget funds that will be spent and reimbursed in FY 2011-12.

When Councilman Smith asked about how we will be able to sustain funding these new officers in the future, City Manager Jackson said that this is something that will have to be planned for and we must continue to build jobs and tax base to meet these needs. We will have to continue to be frugal and find ways to save money and plan to absorb this into our budget in the future.

**RESOLUTION BOOK NO. 34 – PAGE 219**
**ORDINANCE BOOK NO. 27 - PAGE 250**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Bothwell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. SISTER CITIES UPDATE

Mr. Rick Lutovsky, President of Asheville Sister Cities Inc. (ASCI), introduced Mr. Russ Martin, who presented the sign agreement from Valladolid and gifts from Mayor Gonzalo Escalante Alcocer. He then introduced Mr. Gwen Hughes, Special Projects Coordinator for ASCI. Mr. Martin introduced Ms. Karon Korp, Valladolid Chair, who provided a report on the Valladolid delegation trip.

Ms. Korp said that memories, new friendships and life changing experiences were brought back by the group of delegates who traveled to Valladolid the week of November 17-23rd, 2011. The timing could not have been more perfect, as all of Mexico celebrated their Revolution and independence with style, decorations and parades. The purpose of their visit was multi-faceted, and much was accomplished to further our sister city relations in many areas.

A highlight of the trip was the reaffirmation of our formal agreement with Valladolid Mayor Gonzalo Escalante Alcocer who warmly received the group, with details for the signing smoothly orchestrated by former Mayor Russ Martin, an official envoy of Mayor Terry Bellamy. In attendance at the reaffirmation, along with the delegation, were the Director of International Relations for the State of Yucatan, a representative of the American Consul General's office, and a representative from the Mexican Embassy.

A formal Proclamation from Mayor Bellamy was delivered, and gifts were exchanged. The speakers – which also included the Yucatan government representatives, Rick Lutovsky, ASCI President, and Tom Jones, Chair in Valladolid - emphasized to the large audience present the importance of the relationship between Valladolid and Asheville, and the concerns the two share in common: business development, education, tourism, and the vitality of our two cities. Later in the evening, the delegation was hosted by the City of Valladolid at an impressive dinner at the Casa de los Venados, given by John & Dorienne Venator in their 18,000 sq. ft home, featuring the largest collection of Mexican folk art in the country. The evening continued with the crowning of the Revolution Queens, and once again, each speaker on the stage spoke of Asheville and our relationship, as thousands in the street waved and applauded, and our delegation sat front row, proud to represent our city.

Another highlight of the visit were the connections made between Shelley White, Senior Executive for Workforce Development at AB Tech, and Raul Mendoza, Director of ITSVA in Valladolid, along with his Senior Executives Gilberto Diaz and Hector Aguilar. Shelley presented Director Mendoza, Gilberto and Hector with gifts from AB Tech, and a personal letter from Dr. Hank Dunn, with new objectives for exchanges between the institutions. Two college students from our area accompanied the delegation, an initiative of ASCI's focus on youth: Angelica R. Adkins, from AB Tech, and Tykara Young, from Warren Wilson College. Earlier in the year, ASCI's board approved scholarships to assist the students with their expenses, making it possible for them to participate. At the Annual Meeting in January, you'll have the opportunity to hear their personal stories of the trip.

The Mexican Committee's support for the elementary school in Dzitnup made an incredible impact with this delegation: securing two laptop computers to donate to the school (they had none on premise) and bringing books, school supplies and Pen Pal letters from Isaac Dixon Elementary school, thanks to the help of Spanish Teacher Fania Franklin and her students. New member Louis Lieb visited Dzitnup for the first time, along with his friend Marilyn Cain, and was instrumental in getting the letters and books to bring along. Jennifer Hill donated supplies, and Lynn Eddy gave support for the purchase of new books also given to the school. While at Dzitnup, the group visited with each classroom and were enthusiastically greeted by the many students, in addition to being presented with 90 pen pal letters to bring back to students in western North Carolina. Before leaving, several of the students performed a traditional dance that had the whole group enchanted.

On the ground in Valladolid, Tom and Kathie Jones, along with the help of Jane Goldthwaite, put together a tremendous schedule of activities and events for the group. Committee members Francisco Mendoza and Harriet Rich were also instrumental in organizing the myriad details, and ITSVA provided transportation for the group's many endeavors. Home Hosts Byron and Rebecca Augustin, Ivan and Evelyn de Leon, and Hector and Yolanda Aguilar made their Asheville guests feel welcome, and took part in many activities. Luis Calcaneo, Director of Tourism, showed off the new Office of Tourism in the Palacio Municipal, and looks forward to hosting more visitors from our area!

Gwen and Carroll Hughes made their 6th trip to Valladolid, and enjoyed reconnecting with old friends. As Special Projects Coordinator for ASCI, Gwen was instrumental in the planning as well. Dona Chela, who visited us in August was thrilled to see her Asheville friends and show off her city. Most of the group stayed at Casa Hamaca (you'll recall the September auction item of three free days, which came in handy for Russ and Karon) and owner Denis Larsen could not have been more accommodating. A new English Library has been created in Valladolid, in space provided by Casa Hamaca, and many of the books brought by the group were donated to their ambitious efforts.

Several years ago ASCI partnered with LEAF to hold a fund raising event to purchase instruments for the X'ocen performance group, Laboratorios de Teatro Campesino e Indigena. With ongoing support by Tom and Kathie Jones, and a recent grant from the LEAF Foundation,

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the group has grown by leaps and bounds, and now features as many as 200 performers from surrounding areas in the Yucatan: Dzitnup, Nohzuytun, Tikuch, Xuilub, X'ocen, and Valladolid, and from Quintana Roo: San Silverio, Yalchen, and Tulum. The outstanding performance illustrates a day in the life of a community, and the delegation was quite impressed with the breadth and scope of the presentation. It is a goal of the Valladolid committee to bring a portion of the group here in 2012 to participate in the October Lake Eden Arts Festival. At the closing of the performance, the actors gave a tribute to Tom and Kathie Jones for their support on behalf of the group.

It's impossible to visit the Yucatan without seeing the breathtaking sites of the ancient Mayan realm, and the delegation were guests of Raul Mendoza, from ITSVA, as they toured Chichen Itza and learned more about this incredible site. Author and ex-pat Byron Augustin, now living in Valladolid, served as tour guide of the site called Ek Balaam, which lies just north of the city.

Finally, in breakout sessions, the group gathered with their Valladolid counterparts to talk about our many joint projects, student and teacher exchanges, and our desire to host a delegation from Valladolid next year. The group spent their last night celebrating at the Hacienda Oxman, swimming in the deep cenote' there, and dancing to a wonderful seven piece Mariachi band.

To say the delegation was a success would be an understatement. Whirlwind, definitely applies. The sights, people and culture of this marvelous colonial city weave their magic upon a visitor, leaving an indelible imprint.

On behalf of City Council, Mayor Bellamy thanked the delegation very much for their outstanding representation of Asheville

**B. ONE-YEAR UPDATE ON OPENING OF HILLCREST PEDESTRIAN BRIDGE**

Interim Police Chief Wade Wood outlined the following points regarding the one-year update on the opening of the Hillcrest Pedestrian Bridge: (1) The Hillcrest walkover bridge has been open for one year. The second six month period has shown a decrease in activity leading to fewer calls for service to police, and a decrease in fiscal impact from the first six month period; (2) 15 police calls for service from June to November 27, 2011, down from 75 during the first six months; (3) 11.3 hours of police service from June to November 27, 2011, down from 57.2 during the first six months; (4) $282.50 for 11.3 hours, down from $1,429.50 during the first six months; (5) NCDOT opened the bridge on December 2, 2010; (6) Progress Energy installed a street light at the bottom of the stairs at Roberts Street during July 2011; (7) Nuisance court participants performed major clearing around the sidewalks and stairs during August 2011; (8) City Council approved a vegetation removal agreement with the NCDOT during September 2011 (Resolution # 11-201); (9) Progress Energy installed street lights along the sidewalk during November 2011; (10) Target date to begin vegetation removal is January 2012; (11) Vegetation removal will only take place within public right-of-way; (12) The vegetation will be mulched and left on site; (13) City staff will verify boundaries during November and December 2011; (14) City staff will clearly mark the vegetation removal boundary and the trees that should **not** be removed; and (15) NCDOT will make additional repairs to the existing fencing when the vegetation removal process is completed.

Efforts to maintain cleanliness, adequate lighting, and secure fencing have added significantly to the positive outcomes relating to safety and access. It is imperative that these things continue in order to prevent the area from becoming problematic in the future. This has been a successful first year due to the partnership of the NCDOT, City Engineering and Police.

The fiscal impact as noted above, from June through November 27, police service totaled 11.3 hours at a cost of $282.50.

Councilman Smith thanked Interim Chief Wood for their work on this re-opening.

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE 2010 AND 2011 CONSOLIDATED ANNUAL ACTION PLANS

### RESOLUTION NO. 11-242 - RESOLUTION TO APPROVE AMENDMENTS TO THE 2010 AND 2011 CONSOLIDATED ANNUAL ACTION PLANS

Director of Community Development Jeff Staudinger said that this is the consideration of three substantial amendments (Homeward Bound, Housing Assistance Corporation and Western Carolina Community Action) to the 2010-2011 and 2011-2012 Consolidated Annual Actions Plans for CDBG and HOME.

Three Action Plan amendments are proposed.

1. Homeward Bound requests an amendment to increase their $55,203 2011-2012 CDBG Supportive Housing grant by $28,000. This request is made to allow for a full-time case manager position to be focused on the permanent housing program being run in collaboration with the Asheville Housing Authority. The new total grant will be $83,203.

Homeward Bound employs case managers to provide direct assistance to chronically homeless persons to allow them to access and retain affordable housing. The partnership with the Housing Authority gives homeless persons priority for public housing and housing choice vouchers. This program has been recognized both by HUD and by the US Interagency Council on Homelessness as a national best practice. Evidence of its effectiveness has been the Point-In-Time Count reduction of the numbers of chronically homeless persons in Asheville, and the 93% retention rate in permanent housing for the persons who have been assisted by this program. This amendment would allow for service to be provided to an additional 5-10 persons currently experiencing chronic homelessness. Sufficient CDBG funds are currently held in contingency to amend this grant at the level requested.

2. Housing Assistance Corporation requests an amendment to increase their $350,000 2010-2011 HOME grant award for their Oak Haven development by $95,000. The new total grant will be $445,000.

HAC is constructing 56 LIHTC units in Hendersonville for elderly and disabled persons. The project is now under construction. Prior to construction, updated project pricing created a $291,000 finance gap. In order to make up the gap, HAC reduced the project cost by $90,000, and deferred $200,000 of its development fee. HAC seeks $95,000 of additional funding to recover a portion of the deferred development fee. The project would still require a deferred fee of $106,000. Deferred fees affect the sustainability of the organization. The Consortium has $95,000 in available funds, due to the cancellation of the WCCA Rosman development.

3. Western Carolina Community Action is requesting approval to repurpose $15,400 of their 2010-2011 HOME Downpayment Assistance Program grant to Tenant Based Rental Assistance (TBRA). There is no change proposed to the total grant amount.

WCCA was awarded $23,100 of HOME funds in 2010-2011 to provide downpayment assistance loans to four households in Transylvania County. Transylvania County provided $7,700 in matching funds. Since then, four WCCA clients have been able to become homeowners through the USDA 502 direct lending program without the necessity of using DPA funds, and one additional client has been approved by USDA. WCCA has one loan of $7,000 pending. There are no additional clients seeking assistance at this time. There is no program in

Transylvania County that provides security deposit, utility deposit and other upfront rental assistance to low income renters. Ashville's TBRA program has proven very effective in helping low income households secure affordable rental housing, and by so doing house persons who have experienced or are in danger of homelessness. WCCA has operated the HUD Housing Choice Voucher program in Transylvania County for 35 years, and is a consistent "high performer" in this program.

The Housing and Community Development Committee and Asheville Regional Housing Consortium agree with this recommendation.

The draft Action Plan amendments directly relate to the Council's Strategic Goal of "Affordable."

Pros:

- The activities are all eligible activities under CDBG and HOME program rules.
- These proposed amendments allow for efficient use of funds in a timely fashion, and will assist in meeting overall program goals.
- The funds will also assist the sponsoring organizations viability and ability to meet community needs.

Con:

- There are none.

The proposed amendments use funds already available through the CDBG and HOME programs. There is no increase in administrative responsibility for the City. No City General Funds are allocated for these programs.

Staff recommends that Council approve the proposed amendments to the 2010 and 2011 Consolidated Annual Action Plans.

Mayor Bellamy opened the public hearing at 5:40 p.m.

Rev. Christopher Chiaronmonte spoke against providing funds to Homeward Bound as he felt they are taking away funds of those that need it.

When Rev. Lisa Landis wondered if these funds could go to different organizations, Mayor Bellamy responded that these organizations applied for funding.

Mr. John Spitzberg, former social worker for A-Hope, felt that some of the programs they provided are no longer in existence today and explained how the City should be funding one-day shelters.

Dr. Milton Byrd spoke about how this is structured vs. the flow of how you see that type of social environment move.

A man was opposed to funding any of the organizations as he felt the funds would be used for salaries.

A woman was concerned that some people do not know how to navigate the system to the extent needed to access these funds.

A man felt that there is no temporary housing in this community that is not religious based.

Mayor Bellamy closed the public hearing at 5:54 p.m.

Mayor Bellamy said that Homeward Bound has a commitment to housing people using the Housing First model and they have case managers to counsel people who are placed in homes. Even though the City does not fund the Salvation Army or the WNC Rescue Mission, they are partners in the need to house the homeless.

Councilman Bothwell said that the CDBG & HOME funds are intended to provide a certain type of housing and are not used for programming. While we do not have enough resources in the City to help the homeless, churches step forward to also put families in homes. They are organized and have many volunteers and donors to assist.

Councilmen Smith, Davis and Hunt spoke in support in Homeward Bound, noting a lot of people work closely together to address the needs of the homeless.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Hunt moved for the adoption of Resolution No. 11-242. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 34– PAGE 220**

**V. UNFINISHED BUSINESS:**

**A. SECOND READING OF ORDINANCE NO. 4036 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS THE AVENTINE, LOCATED AT LONG SHOALS ROAD AND CLAYTON ROAD FOR A 312 APARTMENT COMPLEX**

City Attorney Oast said that in the interim, between the November 22 Council meeting, where this matter was first presented and voted on, and the second reading scheduled for December 13 several questions have come up. The following memo will attempt to address them (City Exhibit 4):

Procedural Issues. The public hearing on this conditional use permit application was held at the November 22, 2011 meeting of City Council. The public hearing was quasi judicial, and was closed after receiving presentations and comments on November 22. A motion was made to approve the project as recommended by staff. The motion passed on a 4/3 vote.

North Carolina law provides that ordinances or actions having the effect of an ordinance must pass by a two-third's majority of Council in order to be finally adopted on the date on which they are introduced. Because the Aventine project failed to achieve this two-thirds majority, a second reading is required. By operation of the statute requiring the second reading, the matter is still pending before Council on the motion made at the last meeting. A motion to adopt on second reading may not be legally required, and the Mayor may simply call for a vote. However, a motion to approve the project would not be out of order.

Between the November 22 meeting when the matter first came before Council, and this December 13 meeting, two new members of Council have taken office. Similar issues have been addressed by the North Carolina courts. Based on those cases, it appears that the new board may vote on this matter, provided the new members have had an opportunity to review the minutes and any other material presented. In this case, both new members were present at the public hearing on November 22, and have had an opportunity to review the information presented, as well as to consult with staff as to procedural matters.

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In connection with the second reading, Council may ask questions of staff or other witnesses who appeared at the public hearing. In fact, at the previous meeting, Council indicated that there were some aspects of the project as to which further information was desired, and we have asked the applicant and staff to be prepared. While it would be appropriate for the staff and/or applicant witnesses to respond to Council questions (especially since there are new members of Council), the public hearing has been closed without continuation, and reopening it for the receipt of additional substantive evidence may create some due process issues as to lack of notice.

Findings/Conclusions Based on Record. As he advises Council at every conditional use permit hearing, Council must base its decision on the information received at the public hearing, and must make its own findings as to the criteria applicable to conditional use permits. Accordingly, Council may not consider information not in the record, or not relevant to the required determinations. At the November 22 meeting, information was presented as to several issues that, in his opinion, is not clearly relevant to the matters that Council should consider. These include:

1. Voluntary Annexation. While certainly an issue of importance to Council, the willingness of the applicant for the Aventine project to pursue voluntary annexation of the property should not enter into Council's consideration.

2. Ownership of the Property/Developer. Conditional use permits run with the land, and will be binding on whoever owns it now or in the future. Council's deliberations should be without regard to the current or future ownership of the property, or who the proposed developer is.

3. Financial Ability. There was some information presented that the developer has obtained financing, and is able to proceed with the project upon approval. This should also not enter into Council's consideration. Not only does it not bear on any of the required findings, but circumstances could change such that the developer is not able to proceed. Under the UDO, the developer has up to two years to begin the permitted use, or the permit expires.

Proposed Order. The applicant has prepared a proposed order, which he provided to Council. This document may be viewed as the applicant's legal argument for why the conditional use permit should be approved. In the past, when there has been a second reading for conditional use permits, he has used the interval between the first and second readings to prepare and submit similar orders for Council's consideration. This serves the dual purposes of summarizing the evidence on each issue, and clarifies for Council what is being voted on. He has reviewed the proposed order and has no substantial disagreement with it, especially since there was no information presented in opposition to the project. However, Council is the decision-maker, and as with staff's recommended decision, Council may disregard some or all of the proposed findings and conclusions, and should make its own decisions as to each of the required findings. Procedurally, Council may discuss and vote on each determination separately.

Must Satisfy All Required Findings. Finally, in order for a conditional use permit to be issued, the applicant must meet each of the seven criteria outlined in the ordinance. If the application fails to meet one of those criteria, the conditional use permit fails.

When Councilman Davis moved for adoption of the 2nd reading of Ordinance No. 4036, City Attorney Oast said Council did not need a motion or a second but a motion is not inappropriate.

Mr. Will Buie, Civil Engineer, used an aerial (attached to City Exhibit 3) photograph to show the vegetative screen that would remain in place. Using a rendering of the proposed site plan, he showed the distance between the edge of the retaining walls and the edge of the river. He said it's about 300 feet at the southernmost portion and about 55 feet at the closest portion.

The precedent for the retaining wall is across the river at Biltmore Park Town Square. They have a retaining wall at that location which is a little over 60 feet high.

In response to Councilman Hunt, Mr. Buie said that the trees along the riverfront are much higher than their proposed retaining wall. He did not have a sense of how tall the many trees were along the proposed retaining wall.

Councilman Pelly said that he has reviewed the staff report, read the Planning & Zoning Commission minutes and was present for the public hearing on November 22. He understood that seven conditional use standards must be met; however, he noted (as staff did) that the missing element for conditional use standard five was no affordable units in the 312 residential development. At the Planning & Zoning Commission meeting, Mr. Buie said that the rents would range from $1,100 for a one-bedroom apartment to $1,700 for a four-bedroom apartment. At the Nov. 22 Council meeting, the developers said the needs of their investors preclude allowing for the inclusion of affordable units as this would cause the project financially unsustainable. At a time when (1) borrowing costs and interest rates are at the lowest they have been in generations; (2) land values and labor costs are depressed; and (3) another south Asheville apartment complex (Weirbridge Village) found it was possible to include affordable units, he felt that to allow this development without a commitment to affordable units injects unpredictability into this and future developments. We need to set an expectation standard for all who would develop on this scale that affordability has to be a part of the mix. By by-passing the wishes in the City's Comprehensive Plan, the express wishes of the Planning & Zoning Commission and of City Council, he felt the developer has not met all seven standards required. He could not support the project.

Councilman Bothwell was also concerned about the lack of affordable units, but in addition to that, he was unclear how the project met the green and sustainable goals of the City. He noted that the developer was planning to meet the Energy Star Version 2.5; however, after an extensive internet search he could not find that rating. He was also not clear that a land-locked development with no pedestrian egress and no transit connection can be green.

In response to Councilman Bothwell, Mr. Buie said that the energy star process relates more than just to the appliances, as it also relates to the type duct work in the ceiling to make the home as energy efficient as possible. The developer has made a commitment to meet all the requirements of that particular certification; however, they have asked they not go through the certification process as the inspection process is extremely expensive.

Councilman Hunt agreed with Councilman Pelly as he was interested in the development pattern for the City as well. The units are well clustered and it is proximate to a well-designed Urban Village but was disappointed the development is separated from that without a bicycle or pedestrian connection. If the project does not move forward, he would be concerned because there is a demand for rental units in this price range in this community. He said that rental housing, in the developer's committed range, is in high demand. Concerns he would have if we don't approve this project is (1) this project may move outside the City's zoning jurisdiction that would result in fewer requirements that are consistent with the City's standards; and (2) the demand for single-family and duplex housing might be developed further out on the rural landscape and further fragment and degrade our rural landscape. When the Biltmore Park vision came together he envisioned a walkability connection, with more green building, more affordability and more compactness in development. It's that kind of development pattern that makes Asheville stand out. He was concerned that this development is much like suburban residential semi-sprawl development that occurs typically in other places around the country. He felt we are missing an opportunity to add to Asheville's strength if we move forward with this development. However, in considering what our role is in this conditional use permit, he felt that the development meets the specific standards laid out, but there are subjective goals. He felt Council should adopt an ordinance that clarifies their goals in terms of affordability, green

building, perhaps visual screening, strong stormwater regulations, etc. for predictability for developers. He believed that predictability is a key component of smart growth.

In response to Councilman Hunt, Mr. W. Louis Bissette, attorney representing the developer, said that the developer has committed to rents that start at $800 a month (noting that the City's workforce housing range starts at $800, which is about $200 below the maximum workforce housing range). City Attorney Oast said that commitment can and will be made a part of the conditional use permit.

In response to Mayor Bellamy, when Community Development Director explained the definition of affordable housing and workforce housing, Mr. Bissette said the figures from the City say the maximum workforce housing rate for a 1-bedroom is $1,063, a 2-bedroom is $1,390. The Aventine 1-bedroom starts at $825; 2-bedroom starts at $1,000; and a 3-bedroom starts at $1,295. Mr. Buie said that there are 152 1-bedroom units, 115 2-bedroom units and 45 3-bedroom units.

Mr. Paul Szurek explained how workforce housing is needed in this area.

Councilman Davis appreciated the workforce housing rents; however, he wished the project was more pedestrian connected and transit oriented.

Councilman Smith felt that the Council's idea of affordability and sustainable are good questions to discuss at Council's retreat. Because of that, he was concerned about setting a precedent of defining "sustainability" and "exceptional" in Finding No. 7. He was pleased the developer was able to get the 1-bedroom units down to the $800 price point.

In response to Councilman Smith, City Attorney Oast said that if Council would like the units to be in the workforce range, the Order can be re-drafted to accomplish that; however, he noted that incorporated in the Order is the site plan that contains information about the number of units that are 1, 2 and 3-bedroom.

There was a brief discussion, initiated by Councilman Hunt, regarding the duration of the commitment of workforce housing rents. Mr. Bissette said that the developer is committed to these initial rents as long as he can. Vice-Mayor Manheimer felt if we are going to require developers to commit to a certain rent for a certain period of time, then the developers need to know about that ahead of time.

Councilman Pelly was more comfortable with the workforce rent range starting at $825 and would be able to support the project.

Councilman Davis moved to call the question. This motion was seconded by Vice-Mayor Manheimer and carried on a 6-1 vote, with Councilman Pelly voting "no."

On the original motion to approve the Level III site plan (subject to the conditions outlined on November 22 in the motion), and at the request of Councilman Smith, it was the consensus of Council to have Finding No. 7 be amended to read: "The Project as proposed, is consistent with developing the property by utilizing a number of green building techniques, including Energy Star components and providing recycling opportunities to tenants, water conservation and best management practices." With that amendment, the motion carried unanimously.

**ORDINANCE BOOK NO. 27 - PAGE 233**

**B. CONSIDERATION OF A CHARITABLE CONTRIBUTION COMBINED CAMPAIGN FOR CITY OF ASHEVILLE EMPLOYEES**

Director of Finance and Management Services Lauren Bradley said that this is the consideration of a request to continue the consideration of charitable contributions combined campaign for City employees to the City Council meeting on February 14, 2012.

At the September 13, 2011, Finance Committee meeting, a representative from EarthShare North Carolina (ESNC) requested that the City consider expanding its campaign to be a "combined campaign," or one that includes additional federations, which are "umbrella" organizations that have multiple independent, charitable agencies who all work on a specific area of focus as members.

The Finance Committee directed staff to gather further background information about a combined campaign, which was shared with City Council at its October 25, 2011, meeting. At that meeting, Council directed staff to work with representatives from the United Way of Asheville & Buncombe County and EarthShare North Carolina to develop a mutually acceptable proposal for a combined campaign in Asheville and to report back to Council on December 13, 2011.

Staff has been in communication with these two groups over the last several weeks to develop a proposal for further City Council consideration. The stakeholders involved in this process are requesting that consideration of this item be continued until February 14, 2012, to allow additional time to fully evaluate and develop a proposal. The group anticipates bringing forward any major policy issues to the Finance Committee at its January meeting, if necessary.

City staff recommends City Council continue the item to February 14, 2012.

Councilman Hunt moved to continue this matter until February 14, 2012. This motion was seconded by Councilman Bothwell and carried unanimously.

## VI. NEW BUSINESS:

### A. RESOLUTION NO. 11-243 - RESOLUTION WAIVING THE STREET CLOSING FEE FOR THE CLOSING OF A PORTION OF COLLEGE STREET NECESSARY FOR THE BUNCOMBE COUNTY LIFE SAFETY ADDITION

Public Works Director Cathy Ball said that this is the consideration of a resolution to waive the street closing fee for the closing of a portion of College Street necessary for the Buncombe County Life Safety addition.

Buncombe County has petitioned City Council to permanently close a portion of College Street for the purpose of facilitating the Buncombe County Life Safety, and requests waiving the $4,000.00 street closing fee.

City staff supports waiving the street closing fee as it supports a governmental public benefit.

This request supports Council's strategic plan improving public safety for our citizens and develop partnerships with the County. She noted that Buncombe County has contributed $1 Million for renovation of the Civic Center.

Pro:

- Supports a benefit to the community in that the Life Safety addition to the Buncombe County Court House will provide safer access.

Con:

- Expenses are incurred by the City, for staff time, advertising and public notification.

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The street closing fee, which includes public notification and advertising, is $4,000. Approximately $1,800 of this amount includes cost of advertising and notification required for the closing. The remaining amount covers staff time in processing the request.

City staff recommends City Council waive the street closing fees for a portion of College Street for the purpose of constructing the Buncombe County Life Safety addition.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 11-243. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 221**

**B. RESOLUTION NO. 11-244 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE'S PARTICIPATION IN THE N.C. STATE TREASURER'S OTHER POST EMPLOYEE BENEFIT FUND**

**RESOLUTION NO. 11-245 - RESOLUTION SUSPENDING RETIREE HEALTH CARE COVERAGE FOR CITY EMPLOYEES HIRED AFTER JUNE 30, 2012**

Director of Finance & Management Services Lauren Bradley said that this is the consideration of resolutions (1) authorizing the City of Asheville's participation in the North Carolina State Treasurer's Other Post Employment Benefit (OPEB) Fund and (2) suspending retiree health care coverage for City employees hired after June 30, 2012.

Employee compensation packages for active workers can sometimes include healthcare and similar benefits following the completion of active service. Generically, such benefits are described as other postemployment benefits (OPEB) to distinguish them from pensions.

For many years, employers have been required to recognize expenses for the cost of pension benefits as those benefits are earned by employees during their active service life. The Governmental Accounting Standards Board (GASB) extended this same requirement to OPEB effective fiscal year 2008. This change in accounting standards focused attention on the costs of OPEB. The real issue is not the accounting for OPEB, but rather the underlying budgetary and funding challenge that those accounting standards highlight. Meeting this challenge requires local governments to ensure that any such benefits they offer are sustainable over the long term.

State and local governments are required to determine the "actuarial accrued liability" (AAL), or the current value of future OPEB benefits that have been promised to and earned by employees to date. To measure future costs, several factors are taken into account including the number of employees that are expected to receive the benefit, length of time employees will work, life expectancy for employees after retirement, and health care cost increases. The City of Asheville completed this analysis in October 2011, which showed that as of December 31, 2009, the City's AAL was $33,846,854.

State and local governments are also required to determine an "annual required contribution" (ARC) that is actuarially determined and includes amounts sufficient to cover the current year's OPEB costs and the accrued liability amortized over 30 years. By including payment for the amortized unfunded liability, the ARC will likely be substantially higher than annual pay-as-you-go payments. As of December 31, 2009, the City's ARC was $2,995,947.

These accounting standards create an impetus for policy decisions surrounding how to fund the City's existing OPEB liability and how to address the City's benefits structure for future hires to reduce the growth of the liability over time. The policy decisions associated with this report do not entail changes to retiree health care coverage for existing employees or retirees.

**OPEB Funding**

The City has partially addressed the ARC in the past through pay-as-you-go funding for current retiree health care costs. The table below illustrates the City's pay-as-you-go employer contributions for OPEB costs for the fiscal year ending June 30, 2011, along with the net OPEB obligation at year end. The net OPEB amount represents the City's cumulative total OPEB obligation, including payments for the amortized unfunded liability.

| Column 1 | Column 2 | Column 1 - Column 2 | Column 4 | Column 3 + Column 4 |
|---|---|---|---|---|
| Annual OPEB Cost | Employer Contributions made for FY 11 | Increase in Net OPEB Obligation | OPEB Obligation at Beginning of FY 11 | Net OPEB Obligation at end of FY 11 |
| $ 3,008,762 | $ 2,316,990 | $ 691,772 | $ 2,334,093 | $ 3,025,865 |

Since FY 2009, the City has reserved a portion of its assets in the Internal Services Fund – the fund designated to account for its self-insurance programs – to "prefund" the current net OPEB obligation. As of June 30, 2011, the Internal Services Fund had enough cash to fully fund the net OPEB obligation in the amount of $3,025,865.

If a local government chooses to fund in whole or in part its OPEB liability, GASB requires those funds to be deposited in an irrevocable trust fund. Legislation was approved in 2007 by the North Carolina General Assembly that allows local governments to invest OPEB funds with the State Treasurer in an irrevocable trust. Any monies placed in this trust can only be used for the purpose of the trust – retiree OPEB benefits – and the monies are free and clear from the City's creditors. These funds cannot be used for any purpose other than the purpose of the OPEB plan, even in emergencies.

Any OPEB monies invested with the State Treasurer will be allowed to be invested similarly to the Retirement funds, providing for a better return on investment than the City may be able to achieve on its own. This higher investment return positively affects the OPEB calculation by reducing the OPEB liability. For these reasons, it is staff's recommendation that the City of Asheville participate in the North Carolina State Treasurer's OPEB Fund with an initial deposit of $3,025,865.

During FY 2012 and beyond, the net OPEB obligation will continue to grow. Currently, the City does not budget an appropriation to fund the ARC beyond current year expenses, as illustrated in the previous table. To address ongoing funding, staff is recommending that the City appropriate and incrementally increase a budget allocation to address the unfunded portion of the ARC over four years. For example, the City would budget $200,000 in FY 12-13 for OPEB, $400,000 in FY 13-14, $600,000 in FY 14-15 and $800,000 in FY 15-16 for the OPEB obligation. This step-up in annual appropriations over a four year period would place the City in the position at the end of the fourth year of fully funding the annual required contribution. The combination of increased annual contributions along with investment earnings from the trust will provide assets for paying OPEB costs and place the retiree health program on a sound, sustainable financial foundation.

**Benefits Structure**

Given the magnitude of OPEB obligations, many governments are exploring ways to modify health care options, including raising premiums, copayments, coinsurance rates, and the

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like. Over the last two years, the City of Asheville has evaluated similar changes and will continue to bring forward options for City Council consideration during the FY 2013 budget cycle. For the purpose of this report, however, staff is not recommending changes to the health care plan for existing employees and retirees.

Instead, staff is recommending that City Council suspend retiree health insurance benefits for all employees hired after June 30, 2012. While this action may impact recruitment and retention of new employees, it would significantly limit the future growth of the City's OPEB obligation and provide an opportunity for the City to ramp up its annual funding allocation. The City could consider reinstating the OPEB benefit for employees hired after June 30, 2012 at a later date.

The City Council Finance Committee reviewed this item at its meeting on September 13, 2011, and recommended that it move forward for consideration by the full Council.

This action supports the City of Asheville's strategic goal to operate the City to the highest levels of fiscal responsibility.

Pros:

- Prefunding the OPEB liability tends to substantially reduce long-term costs as the investment of fund assets produces earnings that help finance OPEB obligations.
- Prefunding mechanisms promote intergenerational equity because they set aside funds for benefits earned today but not payable for many years into the future.
- Prefunding could have a positive impact on the City's credit worthiness as measured by rating agencies.
- Provides a phased plan for addressing the City's unfunded portion of the OPEB liability.

Cons:

- Restricts the use of funds so that they can only be used for OPEB.
- This action will move assets from the city's government-wide financial statements to a trust, which will result in a decrease in net assets; however, this action has no impact on the General Fund's unrestricted fund balance.
- Eliminating retiree health care coverage for future hires may impact the City's ability to recruitment and retention efforts; this decision could be revisited at a later date if and when economic conditions improve.

As of June 30, 2011, the Internal Services Fund had enough cash to fully fund the net OPEB obligation in the amount of $3,025,865. After funding the net OPEB liability, as of June 30, 2011, the Internal Services Fund will have $933,466 in unrestricted net assets. Staff recommends that this amount remain in the Internal Services Fund to fund unplanned expenses in the City's self-insurance programs.

In order to address the growing OPEB liability and the resulting potential long-term impact on the City's credit worthiness and financial sustainability, staff is recommending the following actions: (1) Approval of a resolution authorizing the City's participation in the State Treasurer's investment trust for local government OPEB funds and related Trust Agreement beginning with a contribution of $3,025,865; (2) Consensus to direct staff to recommend an annual OPEB contribution to the trust fund in the annual budget cycle such that the City reaches the full annual required contribution in the next four years, and; (3) Approval of a resolution to suspend retiree health insurance benefits for employees hired after June 30, 2012.

Mayor Bellamy stressed that this does not affect current or current retirees. If approved, it would go into effect for employees hired after June 30, 2012.

In response to Councilman Hunt regarding the suspension of retiree health insurance benefits for employees hired after June 30, 2012, Ms. Bradley said that once we have caught up on being fully funded, Council would have the flexibility of applying the benefit retroactively or staff could provide Council with a menu of options or other benefits that Council might wish to consider in its place.

In response to Councilman Bothwell, Ms. Bradley said that would not affect the City being a living wage employer. She said the value of the benefit is not realized by the employee until they actually retire. It's not part of their take home pay or part of their health care coverage they are presently receiving.

Councilman Smith hoped we would be able to restore these benefits after we are fully funded in order to remain an employer of choice in the area.

In response to Councilman Pelly, City Manager Jackson said that the City averages 80 new employees a year. Councilman Pelly hoped we could restore the benefit sooner than later because the longer we wait to reinstate it, the tougher it will be to restore the benefit. He felt it was important for Council to revisit this item in one year to see whether we're in a position to re-establish it.

When Vice-Mayor Manheimer asked if the state has suspended retiree health insurance benefits for new hires, Ms. Bradley did not know; however, she did know that many city and county governments have taken this step to address the unfunded liability that they have already incurred.

Mayor Bellamy noted that this Council cannot bind future Councils so when this is revisited in one year, Council will have an opportunity to see how the payments are being made along with best practices. Ms. Bradley responded that the OPEB contribution will have to become a part of the annual budget discussion to talk about the step-up plan and the City's progress in meeting it.

Councilman Davis moved for the adoption of Resolution No. 11-244, authorizing the City's participation in the State Treasurer's investment trust for local government OPEB funds and related Trust Agreement beginning with a contribution of $3,025,865. This motion was seconded by Councilman Smith.

When Rev. Lisa Landis asked if City Council participated in the retirement program for the City of Asheville, Mayor Bellamy replied that they do not.

Mr. Don Lillenfeld did not support the City turning over their funds to the State as he did not think we can trust the State to safeguard those funds.

Mr. Matthew Byrd did not support trusting the State with the City's mass fund that we could control as a City.

In response to Mr. Karl Katterjohn, Mayor Bellamy said that the City would not be tied into the State's bond rating.

The motion made by Councilman Davis and seconded by Councilman Smith carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 222**

Councilman Smith moved to adopt Resolution No. 11-245, to suspend retiree health insurance benefits for employees hired after June 30, 2012, and that this issue be revisited after one year. This motion was seconded by Councilman Davis and carried unanimously.

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**RESOLUTION BOOK NO. 34 – PAGE 224**

**C. RESOLUTION NO. 11-246 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MANAGEMENT AGREEMENT WITH FIRST TRANSIT INC. TO MANAGE THE OPERATION OF THE ASHEVILLE TRANSIT SYSTEM**

Director of Transportation Ken Putnam said that this is the consideration of a resolution authorizing the City Manager to enter into a management agreement with First Transit, Inc. to manage the operation of the Asheville Transit System.

Since North Carolina law prohibits municipalities from engaging in collective bargaining, the City of Asheville must hire a management company to operate the transit system. The management company is a party to a 13(c) Labor Agreement with the Amalgamated Transit Union Local 128 covering all hourly employees. A collective bargaining agreement between Transit Management of Asheville, a subsidiary of First Transit, Inc., and the ATU Local 128 is in place until December 31, 2011.

The three-year contract with First Transit expired on June 30, 2011. This contract was extended twice and it will expire on December 31, 2011. During these extensions staff released a Request for Proposals with the intent to modify the conditions in the current management contract. The city decided to pursue a new contract to incorporate new insurance and liability protections and improvements to current procedures.

The City issued a Request for Proposals (RFP) on June 9, 2011 and it closed on July 18, 2011. Three proposals were received from the following firms:

- MV Transportation, Inc., Fairfield, California
- McDonald Transit Associates, Inc., Fort Worth, Texas
- First Transit, Inc., Cincinnati, Ohio

The proposals were evaluated by a committee that included four members of staff from various City departments and a member of the Transit Commission. The committee individually evaluated and scored the proposals, then combined the scores. The evaluation process took about four months and numerous meetings to ensure that all aspects relevant to the RFP were considered. During the process, the firms were asked to provide additional information to help clarify questions posed by the committee. The committee received much support from the Legal and Risk Management Departments to help the committee understand the legal, insurance, and liability aspects of the RFP.

The parameters to evaluate the proposals, as delineated in the RFP, were based on the following items:

- Vendor organization including history of the company, organization structure, types of services offered, location of offices, etc.
- Qualifications of the company including number of systems managed, number of contracts, management philosophy, training, procedures, and policies.
- Re-engineering options that would potentially make transit operations more efficient.
- Qualifications of the resident general manager as well as central staff that will provide support to the general manager.
- Additional services, references, legal actions, and fee.

After careful review and consideration of all the evaluation factors and the information provided, the committee recommends First Transit, Inc. to provide management services to the City of Asheville.

If approved by City Council, the City will enter into a three-year contract with the management company that can be renewed for another three periods of one year after agreement between both parties. The project cost will be $243,869 for the first year with increments of approximately 4% per year.

| Base Management Fee | Errors and Omissions Liability Policy | Employment Practice Policies Cost | Worker's Comp. and Employer's Liability cost | Total |
|---|---|---|---|---|
| $132,000 | $0 | $9,825 | $102,044 | $243,869 |

The base fee of $132,000 and the Employment Practice Policies cost of $9,825 are already allocated in the FY 2011-12 Transit Administration budget. The Workers Compensation and Employer's Liability costs are allocated in the FY 2011-12 Transit Operations budget. The Errors and Omissions Liability Policy is part of the base management fee.

First Transit, Inc will furnish, through its subsidiary, all management and supervisory services required and necessary for the efficient and economical operation of ATS services under the policies, standards, and procedures established by the City of Asheville.

First Transit, Inc. will provide a resident General Manager and a management support team who shall be responsible for the day-to-day operations of the ATS transit system and have supervisory experience in the following services:

- General transit operations and policies; the management firm is responsible for the day to day operation of the transit system and for developing the policies and procedures to guide transit operation and employees.
- Labor relations; the management firm is responsible for negotiating agreements with the local union, including but not limited to the Collective Bargaining Agreement, day to day labor relations, etc;
- Employment, and training; the management company is responsible for hiring all the employees that operate the transit system, according to their internal policies. The company is also responsible for preparing and implementing a training plan for all the drivers, mechanics, dispatchers, and supervisors. These expenses are part of the operational budget.
- Assistance to city staff with Federal regulations, processes and reporting.
- Routing and scheduling; the company will work very closely with the City of Asheville transportation planning staff to determine the best routes and schedules. The company is responsible for implementing all the operational improvements in the Transit Master Plan Implementation – Phase I.
- OSHA regulations; the company is responsible for complying with the Department of Labor regulations.
- Office management, finance and accounting; the company is responsible for administering and keep all the records related to the pass-through funds that pay for operations and for the day to day administration.
- Risk management, insurance, and claims; the company is responsible for providing timely and accurate information to the COA Risk Management office.
- Equipment and facility maintenance; the management company is responsible for the operation of all equipment and facilities involved in the daily operation, owned by the city.

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- Stores and purchasing; the company is in charge of keeping all the parts and inventory owned by the city, in adequate and safe places. In addition, the management company provides its expertise preparing technical specifications for all the equipment bought for transit operations.
- Specialized services under the Americans with Disabilities Act, including specific training to be able to help customers with disabilities.
- Provision of legal counsel in all legal affairs, suits, pleas, and litigation in which the provider has an interest.

The RFP process has given the City the opportunity to include substantial improvements to current procedures, as recommended in 2010. The following improvements will be part of the new contract:

- Improved and enhanced hiring methods according to the procedures established by the city.
- Enhanced training system, including but not limited to: Federal, state and local safety rules and regulations, system policies and procedures, route training, vehicle inspections, safe driving, emergency procedures, passenger assistance techniques, equipment operation, drug and alcohol use policy, preventive maintenance procedures, etc.
- The Resident General Manager is required to complete the Transportation Leadership Development course, which is offered by the Institute of Transportation Research and Education.
- First Transit will perform an environmental audit every three years to ensure that the Environmental Management System has continuity.

New insurance and liability provisions have been added to the contract, and First Transit, Inc will be responsible for providing the following items:

- Employment Practices Liability policy, which provides coverage for employment related claims, such as harassment, discrimination, wrongful terminations, etc.
- Errors & Omissions Liability policy, which is also referred to as "professional liability" and provides coverage for wrongful acts from professional services that might cause a financial loss.
- Worker's Compensation/Employers Liability policy, which provides coverage to injured workers; paying medical bills and lost wages.

At their December 6, 2011, meeting, the Transit Commission endorsed this action.

This action complies with the City Council Strategic Operating Plan by supporting the fiscal responsibility focus area, specifically operating the City of Asheville to the highest levels of fiscal responsibility.

Pro:

- First Transit, Inc. will provide the management services required to keep the transit system functioning properly and efficiently, managing all the aspects related to the operation.

Con:

- None.

The project cost will be $243,869 for the first year with increments of approximately 4% per year.

| Management fee | Errors and Omissions Liability Policy | Employment Practice Policies Cost | Worker's Comp. and Employer's Liability cost | Total |
|---|---|---|---|---|
| $132,000 | $0 | $9,825 | $102,044 | $243,869 |

The base fee of $132,000 and the Employment Practice Policies cost of $9,825 are already allocated in the FY 2011-12 Transit Administration budget. The Workers Compensation and Employer's Liability costs are allocated in the FY 2011-12 Transit Operations budget. Staff will request a budget amendment to include this cost in the Transit Administration budget at a future date. The Errors and Omissions Liability Policy is part of the base management fee.

City staff recommends that City Council approve a resolution authorizing the City Manager to enter into a transit management agreement with First Transit, Inc. to manage the daily operation of the Asheville Transit System.

Mayor Bellamy said that safety must be the top priority and that the drivers are given the training they need.

In response to Mayor Bellamy, Mr. Putnam said that the contract has been re-written and throughout the process there were many meetings and information sharing between all bidders and staff to make sure we were getting the most important things in the contract, and to also give the City the ability to hold the management company more accountable than we have in the past.

Mayor Bellamy stressed they need to hire the best people available and training them. Mr. Putnam said that provisions relating to that are also in the contract (especially a lot more training opportunities) and the hiring process mirrors our own hiring practices.

Mayor Bellamy urged staff to look at providing bus service to serve MAHEC's new building and the area as whole.

When Councilman Bothwell hoped that we are not pushing our bus drivers to speed to meet schedules, Mr. Putnam responded that safety is the number one concern. In all training sessions, safety is number one and we are trying to be proactive by doing spot checks.

Mr. John Spitzberg urged Council to initiate bus service on Sunday.

Mr. Don Lillenfeld was glad to hear safety is the number one priority for the bus drivers and the passengers.

Mr. Alan Ditmore hoped for bus service on Sundays and holidays.

Mr. Charles Rawls relayed an incident where it took someone 2 hours to get to work and 2 hours to return home. He wondered what has been done to address that issue. City Manager Jackson said he would make transit staff available to go over the route schedule with Mr. Rawls.

Ms. Marion Patton felt that if you address the riding needs of a broader population, the people who really depend in it would benefit.

In response to Mr. Matthew Byrd, Mr. Putnam said that the FY 2011 contract with First Transit was $254,000 and the FY 12 contract with First Transit is $243,000.

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Councilman Bothwell said that because the City receives federal transportation funding, the City must employ union drivers. Because the State prohibits cities from employing union drivers, we have to hire a management company to hire the drivers to drive the buses.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 11-246. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 225**

**D. ORDINANCE PROHIBITING CAMPING ON CITY PROPERTY**

**ORDINANCE PROHIBITING ENCLOSED SHELTERS ON CITY PROPERTY**

**ORDINANCE PROHIBITING STORAGE ON CITY PROPERTY**

City Attorney Oast said that this is the consideration of three ordinances clarifying the use of City property for camping and related purposes.

Recent activities on City property, including parks and right of ways, have revealed issues and uncertainties regarding the use of those areas in certain circumstances. These concerns relate to the actual uses permitted (or not permitted) in those areas, as well as concerns regarding public safety and security.

Most of these issues and uncertainties have arisen in the context of the "Occupy Asheville" movement, which is similar to "Occupy" movements occurring in cities across the country, The movements typically involve a 24/7 presence on public property, or public areas on private property, like Zuccotti Park in New York City. The "Occupy Asheville" group started out in a parking lot on Lexington Avenue, moved from there to the sidewalk in front of the Federal building on Patton Avenue, then to the park area in front of the Biltmore Building, and is now located on City property in front of the City Building.

City parks are subject to a closing time of 10 p.m., by ordinance. Pursuant to City policy, camping is not allowed in City parks. However, the area in front of the City building, while immediately adjacent to a park, is not regularly programmed as a park. Thus, the park closing time and no camping rules do not clearly apply. In other cities, encampments have been forcibly dismantled and there have been confrontations with police, and legal actions with mixed results. The experience in Asheville has been generally cooperative and respectful, with no serious confrontations.

However, concerns have arisen with some activities, notably the use of enclosed tents, proximity of the encampments to business/public entrances for nearby buildings, and presence on or near public right of way. These concerns would exist with any similar use of City property. The concerns relate to the safety and security of members of the public who use the buildings adjacent to the encampments for business purposes such as visiting offices within the building, or using City parks for recreational activities. Special concerns have been expressed by those who must use the buildings at times other than normal working hours, especially employees who work late or on weekends. Concerns have also been expressed regarding damage to vegetation in City parks, and the lack of sanitary facilities.

The ordinances are intended to address these concerns, while recognizing and respecting the rights of assembly and speech, and the right to use public forums for that purpose.

(a) The first ordinance, Sec. 12-46, clarifies that camping is not permitted on City property, and defines camping to include certain specific activities.

(b) The second ordinance, Sec. 11-39, prohibits the erection of enclosed structures on public property, and defines enclosed structures to include tents or makeshift shelters that have more than one side.

(c) The third ordinance, Sec. 11-40, prohibits the storage or leaving of equipment, bags, parcels, or other personal items on City property, and allows the City to remove them.

These ordinances do not prohibit: (a) overnight presence on or occupation of City properties that are not parks, or the public right of way; (b) the use of pop-up tents, umbrellas, or other equipment, as long as that equipment is not left unattended; (c) sleeping on public property, as long as the property remains available for its primary intended use.

In essence, what the ordinances do is clarify that public properties, including parks, remain available for free speech or assembly purposes, but that other activities not essential to the free speech or assembly use do not occur in such a way as to interfere with the use and enjoyment of these properties by others. Unpermitted activities must yield to activities for which a permit has been obtained. As drafted, these ordinances provide that they may be enforced through criminal penalties, a Class 3 misdemeanor.

This action complies with the City Council strategic operating plan in that (1) it promotes safety and security of the public; and (2) it promotes availability of parks and recreational facilities for use by all.

Pros:

- Clarifies permitted activities on public property and right of way.
- Respects rights of assembling and speech.
- Promotes public safety and security.

Cons: None noted.

Adoption of the ordinances is recommended.

Councilman Smith said that since Council has not had time to consult with the homeless service providers to understand better the ramifications of what these ordinances might mean and to allow time for community consideration and review by a Council Committee, he moved to refer these ordinances to the City Council Public Committee for further review. This motion was seconded by Councilman Bothwell.

Councilman Smith noted that the regularly scheduled Public Safety Committee is the 3rd Tuesday of each month; however, new Committee members (which will be appointed later during this meeting) may wish to set a special meeting to review these ordinances. He did note that the Committee meeting is open to the public.

Nine individuals supported referring these ordinances to the Public Safety Committee. Rev. Lisa Landis said that the Detention Center has closed their 24-hour restrooms and asked for approval to locate a Port A Potty on City property in the immediate area.

Nine individuals spoke against referred these ordinances to the Public Safety Committee in that the people need to be heard today and the issues need to be dealt with today.

Councilman Bothwell said that the normal way that changes to our ordinances come to Council is through a City Council Committee. The Committee that oversees policy issues in the

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Police and Fire Departments is the Public Safety Committee. He noted that question have been raised by Council about constitutional issues, application of some of the ordinances, definitions of city property, etc. that should be debated at the Public Safety Committee meeting (which is open to the public).

Councilman Hunt explained that the City Council Public Safety Committee is an open meeting made up of three City Council members only. He noted that public comment is allowed.

If this matter is referred to the Public Safety Committee, Councilman Pelly questioned what assurances the Occupy Asheville people would have to continue their current status and would the City consider providing a space for a Port A Potty on City property. Mayor Bellamy responded that by delaying this issue, City staff will continue to use their best judgment and best case scenarios as there is no clear policy direction from Council. Without Council direction and clear expectations of the policies, staff will do conservative enforcement of their interpretation of existing ordinances. Regarding the Port A Potty, there is already a procedure in place giving staff clear direction.

Councilman Davis felt we are selectively enforcing our ordinances, recalling that the homeless have requested space for camping in the City and also recalling that we have had to go to other public properties in the City breaking up homeless camp sites.

Vice-Mayor Manheimer felt that this issue needed a more thorough vetting of the implications of the ordinances before voting, noting that she has been in contact with the City Attorney for clarification of the definition of City property.

In response to Vice-Mayor Manheimer, City Manager Jackson explained what he meant by status quo, i.e., if we are uncertain whether or not the land that is being camped upon is park land, we would not enforce the park curfew.

The motion made by Councilman Smith and seconded by Councilman Bothwell to refer these ordinances to the Council Public Committee carried on a 5-2 vote, with Mayor Bellamy and Councilman Davis voting "no."

Councilman Pelly said that if we do not allow the placement of a Port A Potty on City property for the use by Occupy Asheville until after the Public Safety Committee addresses the issue, we are criminalizing them because there are no restroom facilities for them. He felt we need a short term response until there is a resolution.

Vice-Mayor Manheimer felt it was important for Council to make the rules and apply them equally to everyone.

After a brief discussion, City Attorney Oast said that it's not possible in our ordinances (Section 16-97) to have a Port A Potty on public property except in connection with a permitted event.

Councilman Bothwell said that the restrooms in the Detention Center were open 24/7, with a key from the Magistrate; however, it is now not open after hours. It was the consensus of Council to direct the City Manager contact the appropriate staff to convey Council's question about the possibility of re-opening the public restroom facilities at the Detention Center.

Mayor Bellamy asked for a representative from Occupy Asheville to make contact with City Manager Jackson in order to be advised of the response regarding the Detention Center restroom facilities.

Because the regularly scheduled meeting of the Public Safety Committee would not be held until January 17, Councilman Bothwell, Chair of the Public Safety Committee, called for a

special meeting on Tuesday, January 3, 2012, at 3:30 p.m. in the 4th Floor Training Room in the Municipal Building. He asked Council that if they have other questions they would like brought up at that meeting to forward them to him.

At 8:18 p.m., Mayor Bellamy called a short recess.

**E. ASSIGNMENT OF BOARDS & COMMISSIONS MEMBERS/LIAISONS FOR 2012-13**

Discussion and appointments were made for the City Council liaison and mandatory seats for Council on the various boards and commissions. City Clerk Burleson has a complete listing of all appointments made.

City Manager Jackson said that he would work with Councilman Pelly in drafting the scope of a new Neighborhood Advisory Committee.

**F. RESOLUTION NO. 11-247 - RESOLUTION APPOINTING A MEMBER AND CHAIR TO THE ALCOHOLIC BEVERAGE CONTROL BOARD**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that the term of Charles Worley, as a member and Chairman on the Alcoholic Beverage Control (ABC) Board expired on November 13, 2010.

The following individuals have applied for a vacancy on the ABC Board: Genny Lynn Beville and Tim Flora.

Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended appointing William A. Russell Jr. as a member and Chairman.

Councilman Davis moved to appoint William A. Russell Jr. to serve a three-year term, term to expire November 13, 2014, or until his successor has been appointed. This motion was seconded by Councilman Hunt and carried unanimously.

Mayor Bellamy said that she has talked with Mr. Ellis about becoming Chairman as he has seniority on the ABC Board.

Councilman Hunt moved to appoint Jim Ellis to serve as Chairman until his term expires on November 13, 2014, or until City Council appoints a replacement. This motion was seconded by Mayor Bellamy and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 226**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Scott Owen asked that Occupy Asheville receive the same police protection as other citizens.

Mr. Kayvon Kazemini felt that the land where Occupy Asheville is currently located should be for the use of the public unrestricted.

Mr. Jonathan Geller felt that the Police Department is selectively enforcing the ordinances, citing an arrest for someone handing out flyers.

Mr. James Lawrence Smith asked for a copy of a 911 recording on October 8, 2011. City Attorney Oast said that the City has provided the transcript to Mr. Smith and it was his opinion that we have abided by the law.

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Dr. Milton Byrd spoke about the need for public trust.

Rev. Lisa Landis spoke about the distribution of wealth and the many different options for economic development.

Mr. Tim Sadler asked for a complete listing of all the City's boards & commissions be placed on the City's website calendar.

Mr. Alan Ditmore explained why he supported Occupy Asheville's action.

Mr. Barry Summers felt the City should take more of an aggressive position with our legislators regarding the possibility of privatizing our drinking water.

In response to a questions raised by a member of the audience, City Attorney Oast said that the public property ordinances were proposed because there were issues that have come up that staff did not have clear means to deal with.

Mr. Martin Ramsey said that Occupy Asheville is not a lobby organization but a direct action organization.

Mr. Reid Thompson felt that City Council is restricting First Amendment rights when they only allow the public three minutes to speak and that presentations must be provided to staff prior to the meeting. He asked the new Council revisit these rules and give the citizens rights to express themselves in certain ways.

Councilman Bothwell appreciated some of the civic engagements that Occupy Asheville has been involved with.

**Annexation Petition Certification – December 12, 2011**

City Attorney Oast said that "Pursuant to Session Law 2011-173 ("Law"), the Buncombe County Board of Elections ("BOE") certifies to the City of Asheville ("City") that 399 petitions signed by landowners as identified on the list ("List") provided to BOE by the Buncombe County Tax Assessor containing 464 parcels proposed for annexation pursuant to the Law have been received. Pursuant to SL 2011-173 (S27), Section 2 (6), 1 unsigned petition for one property parcel was mailed twice, once by mail and returned undeliverable, and once by mail, return receipt requested and returned again; therefore, the number of parcels used for calculating the percentage should be 463. BOE is unable to determine the validity of 27 petitions received when compared to the List. The petitions received are attached to this Certification and hereby delivered to the City pursuant to the Law." City Clerk Burleson signed for the petitions on December 12, 2011.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 10:00 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – January 10, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Mayor Bellamy gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING JANUARY 23-27, 2012, AS "NO NAME CALLING WEEK"**

Mayor Bellamy read the proclamation proclaiming January 23-27, 2012, as "No Name Calling Week" in the City of Asheville. She presented the proclamation to Ms. Debbie Bryant and Ms. Michele Lemelle with the Safe and Drug Free Schools Coordinators for the Asheville City Schools and Buncombe County Schools, who briefed City Council on some activities taking place during the week.

**B. RESOLUTION NO. 12-1 - RESOLUTION SUPPORTING THE RENAMING THE SMOKY PARK BRIDGES ALONG I-240 IN ASHEVILLE IN MEMORY OF FIRE CAPTAIN JEFFREY BOWEN**

Fire Chief Scott Burnette said that the Commissioner of Insurance had an idea to honor Fire Captain Jeffrey Bowen. As the North Carolina State Fire Marshal, Mr. Wayne Goowin has contacted the N.C. Dept. of Transportation Board for the Western District requesting that the Smoky Park Bridge located in the City of Asheville be renamed in honor of Fire Captain Jeff Bowen. This bridge was selected due to its proximity to Capt. Bowen's Fire Station and it is the bridge Capt. Bowen used to travel every day going to and from his Fire Station. Mr. Goowin has asked the City Council and the Buncombe County Board of Commissions to pass a resolution in support of the renaming of the Smoky Park Bridges (Bridge # 322 and # 323) along I-240 in Asheville to "Captain Jeffrey Bowen Bridges".

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Manheimer moved for the adoption of Resolution No. 12-1. This motion was seconded by Councilman Davis and carried unanimously.

Captain Bowen's mother Laurel, his wife Stacy and his son C.J. thanked City Council for this honor.

RESOLUTION BOOK NO. 34– PAGE 227

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 13, 2011

B. RESOLUTION NO. 12-2 - RESOLUTION APPOINTING CHRIS PELLY AS AN EX-OFFICIO, NON-VOTING MEMBER TO THE CITIZENS-POLICE ADVISORY COMMITTEE

RESOLUTION BOOK NO. 34 – PAGE 228

C. RESOLUTION NO. 12-3 - RESOLUTION APPOINTING MARC HUNT AS A MEMBER TO THE HUB COMMUNITY ECONOMIC DEVELOPMENT ALLIANCE

RESOLUTION BOOK NO. 34 – PAGE 229

D. RESOLUTION NO. 12-4 - RESOLUTION APPOINTING CHRIS PELLY AS A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS

RESOLUTION BOOK NO. 34 – PAGE 230

E. RESOLUTION NO. 12-5 - RESOLUTION APPOINTING VICE-MAYOR ESTER MANHEIMER AS CHAIRMAN TO THE POLICE OFFICERS & FIREFIGHTERS DISABILITY REVIEW BOARD

RESOLUTION BOOK NO. 34 – PAGE 231

F. RESOLUTION NO. 12-6 - RESOLUTION APPOINTING GORDON SMITH AS AN EX-OFFICIO, NON-VOTING MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

RESOLUTION BOOK NO. 34 – PAGE 232

G. RESOLUTION NO. 12-7 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN ASSIGNMENT AND ASSUMPTION OF THE CITYWIDE RECYCLING CONTRACT

Summary: The consideration of a resolution authorizing the City Manager to enter into an assignment and assumption of the citywide recycling contract.

The City of Asheville has contracted with Curbside Management, Inc. for citywide recycling services since prior to 2009. To provide the City with more effective, efficient and innovative future services, Curbside Management has partnered with Recycling Partners, LLC. to form Curbside Recycling, LLC., (d/b/a "Curbie"). Curbie is a North Carolina company and will remain at the facilities currently occupied by Curbside Management. The terms and conditions of the current contract with Curbside Management will remain valid and effective.

Consent to the Assignment and Assumption of the Curbside Management Recycling Contract will allow continuation and expansion of Council's goals, specifically with regard to the implementation of single steam recycling collection, which will significantly divert waste previously destined for the landfill.

Pros:

- Continue existing contract, with no additional costs or terms
- Services and new single-stream project would continue unimpeded

Con:

- If not reassigned, entire recycling program would have to be rebid

No additional fiscal impact as current contract and terms would continue as previously agreed.

City staff recommends City Council consent to the Assignment and Assumption of the Curbside Management Recycling Contract to Curbside Recycling, LLC.

In response to Mayor Bellamy, City Manager Jackson said that technically, Council is not being asked to assign the recycling contact but to consent to and authorize the City Manager to sign an assignment and assumption agreement. This assignment will not jeopardize the recycling program but, instead will enhance and improve the program.

**RESOLUTION BOOK NO. 34 – PAGE 233**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Bothwell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Hunt and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. BASILICA OF ST. LAWRENCE PROPOSAL TO PURCHASE CITY PROPERTY

City Manager Gary Jackson said that on December 20, 2011, the City received a proposal from the Basilica of St. Lawrence to purchase the city-owned land on Haywood Street, directly across from the Basilica of St. Lawrence. In order to be responsive to the proposal, City Council may wish to provide direction on the process regarding the plan for the Haywood Street site prior to responding to this specific proposal. An additional letter was sent on December 30, 2011, extending the time to consider this proposal to January 31, 2012.

City Council has previously explored options for developing underperforming City assets, to include the Haywood Street site. The City engaged in an extensive Request for Qualifications process in the fall of 2007 to prequalify a short list of developers for the Haywood Street site. In April 2008, Council directed staff to negotiate with the McKibbon Hotel Group for purchase of the Haywood Street site for redevelopment. To date, no agreement has been concluded, but the McKibbon Hotel Group is still interested in the site.

He recommended Council hear the proposal, consider previous policy direction and advise staff on Council's desired process. Given the seriousness and value of this property, it was his recommendation for Council to delegate this to the Planning & Economic Development Committee to revisit the history and background related to this property, to consider what Council's goals and interest are for this property, the financial investment already made in this property, review the proposal in depth, revisit the proposal on the table from McKibbon Hotel Group, and provide a full report to the Council.

Mr. Matt Morris, representing Basilica of St. Lawrence, understood that this Haywood Street site has been trying to be developed by the City over the last 10 years. He provided Council with the following background information "(1) The Basilica is one of the oldest and most historical structures in Asheville with a very high interest environmentally and economically as an adjoining neighbor to this Haywood site on what will be development on this site in the future. Our position is to protect and preserve the Basilica. Over 300,000 tourists visit the Basilica each year. The Basilica carries National Significance within the National Register of Historic Places; (2) The dome of the Basilica is unique in the history of the American building arts. It is the final great work of Rafael Guastavino Sr., and is one of the very few buildings in which he served as both architect and builder. It is an irreplaceable work of construction and art; (3) As the owners of the Basilica of St. Lawrence, the Bishop of the Roman Catholic Diocese of Charlotte approved to acquire this site with the basis that they are in the best position to control future development in front of the Basilica and protect the dome at the same time; and (4) The Basilica understands it must work with the City to balance being fiscally responsible on this site with any future development while at the same time waiting for the best time to deliver the right developer under the right economic conditions. The Basilica understands that doing nothing on this site is not an option. We will address this in a Purchase and Sale Agreement; (5) Through the Basilica, we will propose something that will be compatible to the Asheville Downtown National Register District in terms of scale and design; (6) Under the umbrella of the Basilica controlling this site, there is a higher probability that a developer (or philanthropic type developer) will come forward to construct something of significant architectural relevance that compliments this area and the history of the Basilica, Grove Arcade and surrounding buildings; and (7) The future development vision: Architectural relevance to enhance tourism to the area / open plaza / square urban designs, with fountains, hardscape, artist area, etc. Something developed of great value to our history and tourism and delivers a "sense of place" for Asheville." He then showed some renderings and photos that will be their guidance to the developer.

He said that the first step should be to have the City reach public and procedural approval to have their Letter of Intent accepted so that they can then move forward in committee to Purchase and Sale Agreement approval and funding. During the Purchase and Sale Agreement, they will work towards approved terms that will spell out coordinated efforts with the City and Basilica for future development timeframes.

He felt the first stage they are looking at is creating a parking lot for a period of time.

It was the consensus of Council to refer this proposal to the Planning & Economic Development Committee to revisit the history and background related to this property, to consider what Council's goals and interest are for this property, the financial investment already made in this property, review the proposal in depth, revisit the proposal on the table from McKibbon Hotel Group, and provide a full report to the Council.

Mayor Bellamy said that the Planning & Economic Development Committee will be meeting on Tuesday, January 17, at 3:30 p.m. in the First Floor North Conference Room of City Hall. The public is invited to attend.

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING TO CONSIDER THE PERMANENT CLOSING OF A RIGHT-OF-WAY ON COLLEGE STREET

### RESOLUTION NO. 12-8 - RESOLUTION TO PERMANENTLY CLOSE A RIGHT-OF-WAY ON COLLEGE STREET

Assistant Director of Public Works David Foster said that this is the consideration of a resolution to permanently close an 80-foot right-of-way on College Street. This public hearing was advertised on December 18 and 25, 2011, and January 1 and 8, 2012.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjacent property owner Buncombe County has requested the City of Asheville to permanently close a right-of-way of College Street, being a portion of College Street running with the Buncombe County property line on the Southern sidewalk of College Street beginning in the front of the existing Buncombe County Courthouse and toward the old Biltmore Press Building. He explained it's not an elimination of the right-of-way, but a narrowing of it.

The Greenway Commission met on December 8, 2011, and approved the closure unanimously.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties
- Buncombe County will be installing the sidewalk within the remaining College Street right of way.

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution to permanently close a portion of College Street.

Mayor Bellamy opened the public hearing at 5:24 p.m.

When someone asked if the closure would affect the bicycle lanes, Mr. Foster said that the closure will not change or alter significantly the existing public infrastructure. The sidewalk, parking and bicycle lane will remain.

Mayor Bellamy closed the public hearing at 5:25 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 12-8. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 34– PAGE 234**

**B. PUBLIC HEARING ON THE PROPOSED EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING CONTRACT FOR VARIOUS CAPITAL PROJECTS AND ACQUISITIONS TO BE DELIVERED IN FISCAL YEAR 2012 AS WELL AS THE REFINANCING OF EXISTING DEBT**

Director of Finance and Management Services Lauren Bradley said that this is the public hearing to receive public comments on the proposed execution and delivery of an installment financing contract for various capital projects and acquisitions to be delivered in FY 2012 as well as the refinancing of existing debt.

Under the provisions of Section 160A-20 of the General Statutes of North Carolina, installment financing contracts involving real property require a public hearing in which the public may comment on the proposed financing. On December 13, 2011, City Council approved a resolution authorizing the negotiation of an installment financing contract and setting the public hearing for: (1) $20.1 million in "new money" for Council approved capital projects authorized as part of the FY 2012 and FY 2011 Budgets, (2) $14.1 million for the takeout of the interim note on the 51 Biltmore Parking Deck project and (3) $10.8 million for the refinancing of some existing debt to achieve financial savings.

After the public hearing, staff anticipates returning to City Council for final consideration of the installment financing contract on February 28, 2012, and closing on the transaction in late March 2012.

Staff recommends that City Council receive public comment regarding the financing and the project during the public hearing.

Mayor Bellamy opened the public hearing at 5:28 p.m.

When Mr. Don Lilenfeld asked if it will cost the City more since we are refinancing, Ms. Bradley replied no.

Mayor Bellamy closed the public hearing at 5:29 p.m.

Mayor Bellamy said that this will be returning to City Council for final consideration of the installment financing contract on February 28, 2012, and closing on the transaction in late March 2012.

**C. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE CONCERNING CHANGES TO THE STANDARDS REGULATING TEMPORARY USES**

**ORDINANCE NO. 4043 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE CONCERNING CHANGES TO THE STANDARDS REGULATING TEMPORARY USES**

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance amending the Unified Development Ordinance concerning changes to the standards regulating temporary uses. This public hearing was advertised on December 30, 2011, and January 6, 2012.

Over the last several months, interest in a collection of amendments has grown and been intermittently discussed amongst staff and the Planning & Economic Development Committee. One of the amendments discussed were some changes to **Article XIV – Accessory and Temporary Uses and Structures,** to provide greater flexibility in some instances, and improved enforcement in others.

Recent changes in the economy have resulted in new practices and warrant a reexamination of applicable standards. Specifically, interest in temporary uses has increased over the last several years to include a growing interest in new large temporary (special) events that can have a positive effect on the local economy, as well as smaller temporary uses that wish to locate in residential areas. Additionally, on-going challenges related to enforcement of portable

on-demand storage containers (PODS) has led stakeholders in the community to request an application process associated with this temporary use to ensure that they do not exceed their maximum allowable time frames and that they do not enjoy an unfair advertising advantage.

There are three issues being addressed through this amendment:

**1. Temporary Use Thresholds** - Temporary uses can range in character, duration and size. Some temporary uses are on-going, recurring uses such as the local tailgate markets; others are seasonal and intended to last only a short designated period of time, typically 30-60 days. Growing in popularity, however, have been temporary uses that may be better classified as temporary "events" that last only 1-2 days. These events vary significantly in size and the larger the event, the greater the need for identification as well as greater the need for review. This amendment proposes to break special short-term events into three thresholds and adjust the review accordingly.

**2. Temporary Uses in Residential Districts** - Temporary uses have not been permitted in residential districts unless a function of a legal and conforming, non-residential use such as a fundraiser held to support a local school or charitable organization. These legal, non-residential uses often include large surface parking lots and there has been a emerging interest in being able to use these areas for privately managed (or supported by the non-residential use) farmers/tailgate markets or produce stands that may benefit the community in which it is located. The most likely sites for these would be the parking areas of churches or schools.

**3. Permitting for Portable On Demand Storage containers (PODS)** – PODS are currently allowed without permit in both commercial and residential areas. In residential areas, they are limited to 14 consecutive days, two times a year; and in commercial areas for 60 days, two times a year. There have been on-going enforcement issues related to such containers exceeding their allotted time periods in commercial areas. In addition, concerns have been received that these same containers are being used as off-premise advertising. As a result the staff is proposing requiring permits for containers in commercial areas that are in front of the principle structure or visible from public thoroughfares and in prohibiting signage on the containers, similar to the prohibition for signs on vehicles when not located on the business property.

Also included in this ordinance is a small housekeeping amendment intended to clarify that temporary mobile food vehicles must leave a site every night or be parked away from the public thoroughfare.

The Planning & Zoning Commission reviewed this ordinance at their December 7, 2011, meeting and voted unanimously to approve the amendment.

This proposal does not directly relate to the goals outlined in the Strategic Operating Plan but is most closely aligned with the goal for "job growth and community development" by balancing business needs with community needs and concerns.

Pros:

- Provides additional identification for larger temporary events.
- Provides opportunity for temporary events in residential areas.
- Addresses an on-going enforcement issue and disparate enforcement of off-premise signage/advertising.

Cons:

- Contributes to the complexity of a permit review.
- Increases the need for permit review.

Increased review times and permit coordination is likely. A separate fee proposal, which will attempt to mitigate the additional costs, will be brought forward for consideration as part of the FY 2012-13 budget process. Costs associated with enforcement are expected to neither increase nor decrease.

Ms. Tuch recommended some changes to the ordinance before the Council. In summary, (1) in Section 7-14-2 (c) (9), the words "when not visible from public areas" be removed; (2) in Section 7-12-2 (d) (3), the addition of the words "and not include signage" be added at the end of the paragraph; and (3) in Section 7-14-2 (d) (3) (f), the addition of the words "... permit for review and approval at the discretion of the Planning director with input from appointed officials."

She recommended approval of this wording amendment, as amended

At 5:38 p.m., Mayor Bellamy opened the public hearing.

Mr. Jay Clarkson, speaking on behalf of Manna Food Bank, supported the ordinance amendment to allow fruit & vegetable markets in residential areas as it will be a way to get fresh fruits and vegetables to those in need and who have no transportation.

Mr. George Morosani, owner of 9 self-storage facilities in Asheville, spoke in support of the ordinance amendment regarding PODS and agreed that all permits should be posted on the exterior of the container and visible to the public. He felt this is a good way to straighten out the rules for outdoor advertising,

Mr. Matthew Byrd felt the main issue is the free advertising and it should be allowed in all districts. In addition, since the issue seems to be signs and not actual storage, he felt having a separate ordinance that prevents any form of storage should not be adopted.

At 5:46 p.m., Mayor Bellamy closed the public hearing.

In response to Councilman Hunt, Ms. Tuch said that there is a definition for a fruit and vegetable market. It covers a wide range of food products, like meats and eggs. What we do limit the amount of non-food items, like handmade candles and jewelry, to not more than 25% so it does not turn into a flea market condition.

There was a brief discussion, initiated by Councilman Smith, about not overlapping the fruit and vegetable markets during the regular business hours for the primary use. He felt that in order to maximize the community benefit of the market, it would be beneficial to have the market open when the people where there for the primary use, such as before and after church or dropping off and picking up children at school. Ms. Tuch explained that the smaller churches and schools don't have a large parking lot (most don't have enough parking to begin with) and most rely on off-street parking. We would not want to displace the parking in the neighborhood to allow for the market in the parking lot. She noted that drop off and pick-up at school is the greatest congestion hours and after the church service is also very congested. To add another use, which could potentially attract others not already on the property, is a concern. Ms. Tuch said that a compromise might be that the market only take up a small space and staff perform a parking analysis. If there is enough parking to cover the use, then the market could also be allowed.

Mayor Bellamy suggested the ordinance be in place for 6 months and staff report back after that time period. She was glad that we are expanding the markets into more locations, but felt we need to do a small step at a time. She agreed that at schools, there is a lot of congestion with parents picking up the children, buses, children walking and biking. There might be a possibility for the schools to work with the markets to allow them to be in their lots at perhaps 4:00 instead of 2:30.

Councilman Smith moved for the adoption of Ordinance No. 4043, with the amendments outlined by Ms. Tuch, with staff reporting back to Council in six months on an update and a possible compromise for the markets to be on the property during the regular business hours of the primary use. This motion was seconded by Councilman Davis and carried unanimously.

At the request of Mayor Bellamy, it was the consensus of Council to have the Planning & Economic Development Committee review the possibility of increased signage on mobile food trucks.

**ORDINANCE BOOK NO. 27 – PAGE 252**

**V. UNFINISHED BUSINESS:**

**A. REGULATING THE USE OF CITY PROPERTY**

Councilman Bothwell, Chair of the Public Safety Committee, said that the Public Safety Committee met on January 3 and briefly discussed the three ordinances presented by City Attorney Oast on December 31, 2011. After public comment, the Committee voted 2-1 to set the three ordinances aside and look into the possibility of a camping permit process. They recommended the following proposal, crafted by Councilman Smith, for City Council consideration:

- Permitted activity is for purposes of "speech"
- Register individual campers
- Maintain cleanliness standards (garbage removal, store items in tents)
- Move tents with regularity (every 48 hours?) to maintain grounds
- True cost pricing for camping permits – by the person, not the tent.
- One tent or less per person, with storage allowed only inside tents.
- No open fires/flame
- Reapply every 7 days
- Provide for use by all
- Port-a-johns permitted using standards for other outdoor event permits
- Port-a-johns available to the public
- Port-a-johns not subsidized by city taxpayers
- Permitted only in specific area(s) - utilize current property only - add other properties as appropriate
- Does not include parks pending further review by Recreation Board and Parks, Recreation &Cultural Arts Department
- Consequences of violation could be:
    - rescinding permit for individuals in violation
    - fines (up to $25) for safety violations (fire, sanitation, other)
    - fines (up to $100 or eviction and referral to Homeless Service Provider) for camping without permit
    - notify homeless service providers if violator requests it
- Speech allowed 24 hours – these rules apply only to camping/sleeping

Councilman Smith said that in his conversations with staff, they don't have ready language for an ordinance to be considered at this meeting. He understood that staff is seeking general Council direction on whether there is sufficient Council interest to proceed in the direction of a camping permit process. He said that staff would be prepared to report back to Council in two weeks with a draft ordinance for consideration.

It was the consensus of Council to direct staff to craft an ordinance regarding a camping permit process for Council consideration on January 24, 2012.

## VI. NEW BUSINESS:

### A. RESOLUTION NO. 12-9 - RESOLUTION AMENDING THE TRANSFORMATIONAL PROJECTS POLICY TO EXPAND THE AREA OF ELIGIBILITY TO INCLUDE THOSE SECTIONS OF SCHENCK PARKWAY AND LONG SHOALS ROAD (FROM THE INTERSECTION WITH HENDERSONVILLE ROAD TO THE INTERSECTION OF CLAYTON ROAD) POLICY

City Manager Jackson said that this is the consideration of a resolution amending the Transformational Projects Policy to include those sections of Schenck Parkway and Long Shoals Road (from the intersection with Hendersonville Road to the Intersection of Clayton Road) within the City of Asheville to the areas eligible for incentives.

In March of 2011, City Council adopted the Transformational Projects Policy. This policy makes grants available to developers who build affordable and workforce housing, or certified "green" commercial, residential or mixed use developments, in designated geographic areas in the City. The eligible geographic area generally coincide to those areas within one-quarter mile of existing Asheville Transit routes. The Policy guidelines allocate points for developments that meet certain housing affordability or green building criteria, and the points earned indicate the extent of the grant award available. The amount of the grant award available is equivalent to the difference between the City property tax on the existing property prior to the new development, and the City property tax on the property after the qualified development has taken place, for a specified time period based on points earned. The Incentive also allows for a percentage of fee rebate based upon earned points. All grant awards are subject to approval by City Council.

Biltmore Farms LLC has requested that the City extend its Transformational Projects Policy to the Biltmore Park Town Square area. The proposed expansion area includes Biltmore Park (which has remaining parcels on which approximately 100 to 165 additional multifamily units could be developed), Schenck Parkway, and Long Shoals Road (from the intersection with Hendersonville Road to the intersection of Clayton Road). The request is that the policy be the same as the current incentive policy, encompassing properties which are within one-quarter mile of the named roads.

Their rationale for this proposed expansion is to give equal access to incentives to developers in this area who can build energy efficient affordable and workforce housing. There are numerous parcels of developable land within the City limits that are very close to, or on a transportation corridor to, Biltmore Park and its high employment concentrations. Staff notes that the Land Use Incentive Grant is not applicable for the extraterritorial jurisdiction (ETJ), so those areas within the proposed boundaries but in the ETJ would not be eligible until or unless they were annexed.

When this proposal was reviewed by the Housing and Community Development Committee it was noted that the eligible geographic boundaries of the Land Use Incentive Policy as currently adopted align with City Transit routes. There is currently no bus service to Biltmore Park Town Square or on Long Shoals Road west of Hendersonville Road.

The Transit Master Plan does recommend bringing bus service to Biltmore Park Town Square "immediately," but that action is constrained by budget limitations. The Plan also recommends a Long Shoals Road express in the next two to five years with a freeway routing to downtown.

After discussion, the Housing and Community Development Committee recommended approval of this request.

The draft Action Plan Amendments directly relate to the Council's Strategic Goal of "Affordable."

Pros:

- The proposed expanded boundaries for the LUIG could encourage workforce and affordable housing development near a growing employment center;
- Biltmore Park is an example of planned mixed use development that encourages locating residential uses within walking and other alternative transportation access to employment, shopping and services;

Cons:

- There is no public transportation currently to Biltmore Park, although it is planned.
- Major transportation infrastructure (in the form of very wide roads) separates Biltmore Park from development on Long Shoals Road north, making walking and bicycling to the transit available on Hendersonville Road difficult.
- Some of the proposed expansion area is either in the ETJ or county, and would not be eligible for incentives until or unless annexed.

Land Use Incentive Grants are to be paid from City General Funds, and are based upon the difference in city property tax payable for a newly developed property versus an existing property, and a rebate of some building permit fees. The grants are to be made on a case-by-case basis.

Staff recommends that Council approve the proposed expansion of the area eligible for the Land Use Incentive Grant as it reflects the intent for future transit service to a substantially dense and mixed-use area of the city offering housing, shopping, services, and jobs.

Mr. Paul Szurek, representing Biltmore Farms, spoke in support of the resolution.

Mr. Matthew Byrd spoke in opposition of the resolution and felt that we should be creating incentives to restructure our buildings downtown.

In response to Councilman Davis, Community Development Director Jeff Staudinger said that this does not affect the recently adopted conditional use permit for The Aventine.

Councilman Hunt said that the incentives were initially created for transit routes and the Long Shoals Road corridor is becoming more developed and urbanized. In order to have a transit route there, we need to justify it by good smart development that is dense. He also acknowledged the good partnership that the City has with Biltmore Farms. He reiterated that this policy does not apply to property in the City's extraterritorial jurisdiction area, but he was interested in working with staff to consider incentives for voluntary annexation in places like further out Long Shoals Road.

Mayor Bellamy felt this is another item that the Planning & Development Committee should look at in the future.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Manheimer moved for the adoption of Resolution No. 12-9. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 235**

**B. RESOLUTION NO. 12-10 - RESOLUTION APPROVING HOUSING TRUST FUND LOAN RECOMMENDATIONS**

Community Development Director Jeff Staudinger said that this is the consideration of a resolution authorizing approval of Housing Trust Fund loans to Beaucatcher Properties, LLC (Johnston Blvd) and Mountain Housing Opportunities, LLC (Glen Rock Hotel).

Staff received three (3) applications for HTF funding totaling $800,000. These applications were presented to the Housing and Community Development Committee (HCD) on December 1st and each was evaluated on its own merit. Resources were insufficient to approve all applications in the amounts requested. The total amount of fund resources, including the current cash balance, pending land sale, and projected revenues thru June 30, 2012, is $665,646.

Two (2) applications have been recommended by the HCD for approval:

1) Beaucatcher Properties LLC for the construction of a cottage development on Johnston Boulevard in West Asheville, $200,000.
2) Mountain Housing Opportunities, LLC (MHO) for rehabilitation of the historic Glen Rock Hotel building on Depot Street, $220,000.

Beaucatcher Properties, LLC - Johnston Blvd $200,000.

Mr. Kirk Booth, representing Beaucatcher Properties, has proposed an 18-unit family rental development project on Johnston Blvd in West Asheville. The site size is 1.1 acres. The property is currently zoned Residential (RS-8). The loan terms requested are $200,000 at 3.00% interest, fully amortizing for 30 years. The total project development cost is $1,610,000. The per-unit subsidy is $11,111. The project is planned to be affordable to households earning 80% of area median income.

The project is designed as a cottage style development composed primarily of single-unit structures. No TRC or P&Z approval will be required. Units will be offered first to Section 8 Voucher holders. The project includes an existing 2-bedroom home on the site that will be remodeled and incorporated in the proposed development. The unit is currently unoccupied. The new units will consist of eleven (11) three-bedroom single family homes and six (6) one-bedroom apartments over garages. The site is infill development in an older established neighborhood with water and sewer access available.

The loan request represents 12.4% of the total development costs. The land is being purchased at $120,000 and includes the existing 2-bedroom house. The land cost is $6,666 per-unit. The total per-unit development cost is $89,444 per unit.

The project is within 1/4 mile of transit. None of the units will be ADA accessible. The project will not be Energy Star certified but does incorporate many of the desired elements such as energy star appliances, low-e windows, and low-flow water systems.

Strengths:

- The cottage style development allows for added density as use by right.
- Infill development supports strategic planning goals.
- Construction ready to proceed immediately.
- The developer has completed other local projects in a timely manner. The four units supported in 2011 have been completed and leased.

Concerns:

- Three bedroom rental units are not a Housing Trust Fund priority;
- Rent structure is set at the maximum of 80% AMI affordability level.

Mountain Housing Opportunities, LLC (MHO) - Glen Rock Hotel $220,000

MHO has proposed a 22-unit multifamily rental development in the historic Glen Rock Hotel building on Depot Street. The site size is .66 acres and is currently zoned Urban Place with Conditional Use zoning. The proposed total project development cost is $2,118,980. Through this project, 11 HOME units will be created, fulfilling the HOME unit commitment in the old East Riverside project. The amount of that grant ($235,000) is included in the project's sources of funds.

The request has been approved by HCD as two separate loans, with the more favorable terms being offered for the units rented below 60% AMI. The first loan in the amount of $165,500 will be structured as a deferred interest-only loan at 2.00% interest with principal deferred for 20 years. This represents 75% of the total loan request. Twelve (12) of the proposed units will be targeted to persons at or below 60% AMI. The second loan in the amount of $55,000 will be amortized at 2.5% interest for 20 years. This represents 25% of the total loan request. Ten (10) of the proposed units will be targeted to persons at or below 80% AMI.

The project proposal meets the funds' stated priorities in that 100% of the units will be one-bedroom floor plans. The first floor of the hotel (12,600 SF) will be developed commercially at a later time. The second and third floors (15,306 SF including common areas) will be adapted to residential use. The upper floors include eight (8) rooms of 150 square feet (1200 SF total) that cannot be used as living space. These spaces are attributed to the live/work component of the project and residents will have the option to lease these additional spaces for $150 per month for use as office or studio space which generates an additional $14,400 in annual gross rents. The per-unit subsidy based on a total loan of $220,000 is $10,000. The total loan request represents 10.4% of the total development costs. The developer will also be applying for additional HOME funds and a request of $200,000 is anticipated. The land and building cost is prorated at $22,343 per unit. The total per-unit development cost is $96,317.

The project is located in the East of the Riverway area, and is easily accessible to services, transit and employment. Two (2) of the units will be fully ADA accessible. The project will be LEED certified. Success of previous mixed-use developments demonstrates sufficient developer capacity for this type of project.

Strengths:

- Priority development area.
- Development team has been successful on similar projects.
- Financing commitments totaling $398,500 have been received from Buncombe County and NeighborWorks America.
- Urban location with easy access to employment, transit, and services.
- Energy efficiency with LEED certification
- Addresses the need for additional one-bedroom and efficiency units.
- Rehab and adaptive reuse of existing building.
- Catalyst for continued revitalization of a formerly distressed area.

Concerns:

- Developer relying heavily on City subsidy.
- Increased competition for all resources makes finding the right mix of development sources challenging
- HOME funding cuts will mean increased competition for that resource
- The City has a significant prior investment in the Glen Rock Apartments representing a substantial concentration of capital.

The projects directly support the City's Strategic Operating Goals: (1) *Affordable*: The project proposal is supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville; and (2) *Sustainable*: The proposed projects provide new housing units

located near transit lines, higher urban development densities, and encourage higher standards of energy efficiency. The projects also address the priorities of the Consolidated Strategic Housing & Community Development Plan by increasing the housing stock, providing affordable rental units, building high quality energy-efficient housing, and coordinating development with transportation and jobs.

The current balance in the Trust Fund is $292,211. The proposed projects are new construction and are anticipated to add $3.7 million dollars in new development to the City tax base. If the projected program income of $373,435 is received as expected, then there will be no adverse fiscal impact. Although highly unlikely, if future revenue projections prove incorrect then funds may not be available for disbursement until the fund has been replenished; either through a new appropriation or the receipt of future program revenue beyond July 1, 2012.

The Housing and Community Development Committee recommends City Council approve a resolution approving the following loans:

1. $200,000 amortized at 3.00% interest for 30 years to Beaucatcher Properties, LLC for the development of 18 single-family rental units on Johnston Boulevard; to be made immediately available for disbursement following loan closing.

2. $165,000 at 2.00% interest-only with principal deferred 20 years to Mountain Housing Opportunities, LLC for the development of 12 multifamily units at the Glen Rock Hotel on Depot Street; all funds to be made immediately available for disbursement following loan closing. These 12 units to be restricted to families earning 60% or less of the area median income.

3. $55,000 amortized at 2.5% interest for 20 years to Mountain Housing Opportunities, LLC for the development of 10 additional multifamily units at the Glen Rock Hotel on Depot Street; all funds to be made immediately available for disbursement following loan closing. These 10 units to be restricted to families earning 80% or less of the area median income.

Mr. Staudinger responded to several financial requests raised by Vice-Mayor Manheimer.

In response to Councilman Hunt, Mr. Staudinger said that there are multiple projects in the in the pipeline that would seek Housing Trust Fund resources. Every year we receive active interest from at least 3-4 developers (private sector, non-profits and partnerships) seeking resources, whether the resources are combined with HOME funds, or the Low Income Housing Tax Credit Program, or whether they are for projects that are developed privately or by non-profit developers. The demand far out cedes the funds available at any one time in the Housing Trust Fund. He explained that we do not release funds until a budget amendment has been approved by City Council and the cash is available to lend the applicants. We are expecting a receipt sometime in the next few months from the sale of land that is under contract with Habitat for Humanity that was purchased by the City as part of a foreclosure proceeding. We expect to have sufficient resources to meet the demand within this fiscal year for these loans and loans that have not closed. New commitments will always depend on whether an additional allocation is included by Council in the annual budget of the Housing Trust Fund.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 12-10. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 236**

## C. RESOLUTION NO. 12-11 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE CONTRACT WITH DIXON HUGHES GOODMAN LLP FOR AUDITING SERVICES FOR FISCAL YEAR 2010-2011

## RESOLUTION NO. 12-12 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH DIXON HUGHES GOODMAN LLP FOR AUDITING SERVICES FOR FISCAL YEAR 2011-2012

Finance & Management Services Director Lauren Bradley said that this is the consideration of: (1) a resolution authorizing the Mayor to amend the contract to audit city accounts for fiscal year 2010-2011; and (2) next steps for awarding the auditing services contract for fiscal year 2011-2012.

North Carolina General Statute 159-34 requires that local governments have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission (LGC) and confers upon the LGC the authority to issue rules and regulations to ensure the quality and consistency of auditing services. The LGC has issued several rules in connection with the audit contract including amendments to the audit contract be approved by a vote of the governing board in a public meeting.

### (1) Contract Amendment for FY 2010-2011 Audit Services

On May 24, 2011, City Council approved a contract with Dixon Hughes PLLC, in the amount of $109,000 for auditing services for Fiscal Year 2010-2011. The contract did not include reporting changes related to GASB 54 implementation and major fund reclassification. In addition, the contract did not include the Energy Efficiency Conservation Block Grant to be audited as a major program.

Dixon Hughes has submitted an amendment to the contract in the amount of $10,000 seeking additional compensation for required work not included in the original contract. If approved, the total amount of the 2010-2011 contract would increase from $109,000 to $119,000. Funds are available in the Accounting Division of the Finance Department to cover this additional expenditure. This supplemental billing is not unusual. Dixon Hughes requested and received an additional $13,600 in connection with the 2010 contract and $10,500 with the 2008 audit contract.

Pros:

- Complies with the requirements of the Local Government Commission in connection with amending the audit contract
- Conforms to the terms and conditions of the audit contract

Con:

- Requires additional funding (resources are available).

### (2) Next Steps for Awarding Audit Services for FY 2011-2012

**Best Practices**

The Government Finance Officer's Association (GFOA) has made the following recommendations, among others, regarding the selection of auditing services:

- Governmental entities should enter into multiyear agreements of at least five years in duration when obtaining the services of independent auditors. Such multiyear agreements can take a variety of different forms (e.g., a series of single-year contracts) and allow for greater continuity and help minimize the potential for disruption in connection with the independent audit. Multiyear agreements can also help to reduce

audit costs by allowing auditors to recover certain "startup" costs over several years, rather than over a single year.

- Governmental entities should undertake a full-scale competitive process for the selection of independent auditors at the end of the term of each audit contract, consistent with applicable legal requirements. Ideally, auditor independence would be enhanced by a policy requiring that the independent auditor be replaced at the end of the audit contract, as is often the case in the private sector. Unfortunately, the frequent lack of competition among audit firms fully qualified to perform public-sector audits could make a policy of mandatory auditor rotation counterproductive. In such cases, it is recommended that a governmental entity actively seek the participation of all qualified firms, including the current auditors, assuming that the past performance of the current auditors has proven satisfactory.

**History**

The City of Asheville has utilized Dixon Hughes for auditing services for the last six fiscal years under single-year contracts. The City retained the services of Martin Starnes & Associated for the FY 2004-2005 fiscal year audit and utilized Crisp Evans Hughes for several years prior to FY 2005.

The City's long term relationship with Dixon Hughes is likely related to several factors, including the fact that it is the largest CPA firm in the southeast with a local office in Asheville. During the last three years, Dixon Hughes worked with Asheville as the City transitioned to a more complex financial system through the implementation of the enterprise resource planning (ERP) software Munis. At the same time, the City's Finance Department experienced staff turnover in key positions, and continuity in the independent auditor's role has been essential to timely completion of the audit. As a result, Dixon Hughes has extensive experience auditing the City's financial systems, accounts and records, including valuable insight and understanding of the financial system's processes and controls.

Last year, City Council expressed an interest in pursuing a competitive process for the selection of independent auditors. Staff is prepared to launch a Request for Proposals (RFP) for these services if City Council maintains an interest in doing so; however, staff is requesting that the City delay the RFP process for an additional year to permit a relatively new team in the Finance Department the optimal opportunity to complete the audit by October 31, 2012, a deadline that was recently adopted by City Council as part of the City's Financial Policy. Transitioning to a new audit firm will require additional time to get the auditors familiar with Asheville's financial systems, processes and controls. As illustration, according to a survey of the public accounting firms and Fortune 1000 public companies (United States General Accounting Office 2003), auditors' initial year audit costs increase by more than 20 percent over subsequent year costs to acquire the necessary knowledge of the client. In addition, their marketing costs also increase by at least more than 1 percent. Additionally, the survey found that clients will incur additional auditor selection costs and auditor support costs of at least 17% of initial-year audit fees.

As such, staff recommends retaining the services of Dixon Hughes for a single, final year to conduct the audit of the city's accounts for the fiscal year ending June 30, 2012. Staff further recommends that the City issue an RFP in the November/December 2012 timeframe for audit services for FY 2013.

If City Council would prefer to issue an RFP for services for FY 2012, the process would need to begin immediately, with RFP development and release occurring in January 2012, and evaluations and award occurring in February. The timeline for the RFP would not provide an opportunity for Finance Committee participation, and a recommendation would be brought forward to the full Council instead. Staff would seek City Council direction on whether Dixon

Hughes should be invited to respond to the RFP or should be instructed not to participate in the process.

**Contract Proposal**

Dixon Hughes has proposed an audit fee for fiscal year 2011-2012 of $95,000. The original fee for last year's audit was $109,000. The fee proposal of $95,000 represents a reduction from the prior year's fee because of efficiencies gained in the audit performance over the last year. The proposed fee appears to be competitive when compared to similar sized municipal audit fees for FY 2010 based on information available from the North Carolina State Department of the State Treasurer.

This action complies with City Council's Strategic Operating Plan of operating the City of Asheville's organization to the highest fiscal responsibility.

Pros:

- Contracting with the current external auditor will help ensure the timely and successful completion of the annual audit.
- Pursuing an RFP process may yield a more competitive fee; however, initial year costs may be higher to compensate the firm for the additional time it will take to acquire knowledge about the City's finances.

Cons:

- Contracting with Dixon Hughes delays a competitive process for selecting an independent audit firm for an additional year.
- Contracting with a new independent audit firm will require more time and resources to complete the audit by October 31, 2012.

The contract amendment with Dixon Hughes for FY 2010-2011 entails compensation in the amount of $10,000 to cover additional required work not included in the original contract. This additional amount will be paid for with currently budgeted funds.

A fee of $95,000 has been proposed for the FY 2011-2012 audit and is included in the Finance Department's portion of the annual operating budget. The total cost is less than FY 2011 by $24,000.

City staff recommends adoption of the resolutions: (1) Authorizing the Mayor to amend the contract to audit accounts for fiscal year 2010-2011 in the amount of $10,000 with Dixon Hughes, and; (2) Authorizing Mayor to execute a contract with Dixon Hughes Goodman LLP in the amount of $95,000 for auditing services for fiscal year 2011-2012.

Councilman Hunt recommended we proceed with an RFP for the auditing services every five years and that the process be delayed until FY 12-13. In addition with receiving proposals, he suggested an internal review of our current auditors and their quality of service.

Mayor Bellamy asked for an amendment to the resolutions to reflect that the City Manager be authorized to sign the contracts.

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Vice-Mayor Manheimer moved for the adoption of Resolution No. 12-11, as amended. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 237**

Vice-Mayor Manheimer moved for the adoption of Resolution No. 12-12, as amended. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 238**

**C. BOARDS & COMMISSIONS**

Regarding the ABC Board, Vice-Mayor Manheimer, Chair to the Boards & Commissions Committee, said that she has received a letter from the Chairman Ellis of the ABC Board requesting further advertisement. The current applicants (Genny Beville and Tim Flora) will be considered for interviews. It was the consensus of the Committee, and of City Council, to re-advertise for the vacancy of Charles Worley.

Regarding the Affordable Housing Advisory Committee, Vice-Mayor Manheimer noted that City Council has earlier agreed to an interview of Jayden Gurney (representative of the Housing Authority) on January 24, 2012.

Regarding the Airport Authority, former Vice-Mayor Brownie Newman is currently serving until June 30, 2012, and would be willing to remain until his term ends. Mayor Bellamy said that several years ago it was the consensus of Council to have a seated member of City Council on all our authorities to make sure that Council's voice is heard. With our Airport and our water being discussed with our legislators to take them away from the City, she felt it was important that City Council is informed as possible. She felt it was important for a Council member to be at the table while those issues are being discussed. Councilman Smith felt Mr. Newman would convey that information thoroughly in a timely fashion to Council. Councilman Davis supported Mr. Newman remaining on the Authority due to his knowledge of the discussions of the joint fire station at the Airport; however, Mr. Newman did state to him that he would understand if Council preferred to have a seated member of Council on the Authority. Councilman Davis said that Vice-Mayor Manheimer might be interested in the position and he would support that as well. Vice-Mayor Manheimer asked that this item be revisited in one month.

Regarding the Asheville-Buncombe Community Relations Council, Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended (and Council agreed) these vacancies be reviewed in one month since the City has not heard about the reorganization of the Community Relations Council. Mayor Bellamy said that the Community Relations Council Board is currently in the process of hiring an Executive Director and should be functioning shortly after the new Executive Director is hired.

Regarding the Asheville-Buncombe Fair Housing Commission, Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended (and Council agreed) these seats be postponed for six months.

Regarding the Homeless Initiative Advisory Committee (HIAC), Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended, at the request of the HIAC, (and Council agreed) that these positions be re-advertised. During this re-advertisement time period, the HIAC will interview the applicants and per their charge, make a recommendation to City Council. Said charge reads "all members of the HIAC shall be recommended for appointment by the HIAC on the basis of their focus area or organization ..."

Regarding the HUB Community Economic Development Alliance, since no candidates applied, it was the recommendation of the Boards & Commissions Committee (and Council agreed) to re-advertise.

Due to a conflict with another board by Councilman Hunt, Vice-Mayor Manheimer was pleased to take over the liaison seat on the Asheville-Buncombe Historic Resources Commission. The Council concurred in this replacement.

For future consideration by the Boards & Commissions Committee, Councilman Hunt wondered if there was a need for all boards and commissions to play some kind of advocacy role in recruiting and promoting candidates for vacancies. Mayor Bellamy felt that as many people as possible should part of the process and encouraged the public to apply, even if there is not an existing vacancy on a board that they may be interested in.

**RESOLUTION NO. 12-13 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT**

Vice-Mayor Manheimer said that the terms of Nelda Holder (Alternate), James Sheeler (Alternate), Robert Middlemas (Regular) and Janet Whitworth (Regular) as members on the Board of Adjustment expire on January 21, 2012. In addition, there currently exists a vacancy, left by Kristy Carter (Regular), whose term will expire January 21, 2014.

The following individuals applied for vacancies on the Board of Adjustment: David Nutter and Dima Kulakov. In addition, the following Alternates are interested in a Regular seat: Richard Fort, Phillip Hardin, Douglas Hattaway, Nelda Holder and James Sheeler.

Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended (1) reappointing Janet Whitworth (Regular) and Nelda Holder (Alternate); (2) appointing Douglas Hattaway (Regular) and Richard Fort (Regular); and (3) re-advertise for the two remaining alternate seats.

There was a brief discussion on filling the remaining two regular vacancies; therefore, each Council member voted their two choices, resulting in David Nutter receiving 2 votes, Dima Kulakov received no votes; James Sheeler receiving 4 votes; Nelda Holder receiving 2 votes, Philip Hardin receiving no votes, Richard Fort receiving 2 votes, and Douglas Hattaway receiving 4 votes. Therefore, James Sheeler was appointed as a regular to serve a three-year term, term to expire January 21, 2015, and Douglas Hattaway was appointed a regular member to serve the unexpired term of Ms. Carter, term to expire January 21, 2014.

Councilman Bothwell moved to reappoint Nelda Holder (Alternate) to serve an additional three-year term, term to expire January 21, 2015. This motion was seconded by Mayor Bellamy and carried unanimously.

Councilman Davis moved to reappoint Janet Whitworth (Regular) to serve an additional three-year term, term to expire January 21, 2015. This motion was seconded by Councilman Bothwell and carried unanimously.

When Councilman Hunt asked if there was a policy that no person can serve on more than one board or commission, Vice-Mayor Manheimer said that it is possible and the Committee did take that into consideration with Mr. Nutter, who currently serves on the Historic Resources Commission. She said that serving on one board does not prohibit someone from serving on another board. City Attorney Oast said that depending on the nature of the appointment, there may be limitations prescribed by the dual office holding provisions. The Historic Resources Commission and the Board of Adjustment are two positions which he thinks that law applies. He would research that if applicable at this meeting.

Mayor Bellamy moved to appoint David Nutter to the vacant Alternate seat left by Mr. Hattaway, term to expire January 21, 2014, subject to the City Attorney's review of the dual office holding provision. This motion was seconded by Councilman Bothwell and carried unanimously.

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It was also the consensus of Council to re-advertise for the alternate vacant seat left by Mr. Sheeler.

Following the vote, Mr. Nutter advised the City Clerk, who in turn advised Council, that he was not interested in the Board of Adjustment Alternate seat, but he was interested in a seat on the Downtown Commission. Mr. Nutter said that he would resign from the Historic Resources Commission if appointed to the Downtown Commission. Therefore, Council instructed the Clerk to advertise for two alternate seats.

**RESOLUTION BOOK NO. 34 – PAGE 239**

**RESOLUTION NO. 12-14 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE DOWNTOWN COMMISSION**

Vice-Mayor Manheimer said that the terms of Kitty Love, Michael McDonough and Jimi Rentz, as members on the Asheville Downtown Commission, expired on December 31, 2011.

The following individuals have applied for a vacancy on the Downtown Commission: David Nutter, Edward Loewe and Patric Mullen.

Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended (1) reappointing Michael McDonough and Jimi Rentz; and (2) re-advertising for the remaining vacancy.

Councilman Davis to (1) reappoint Michael McDonough and Jimi Rentz to each serve a three-year term respectfully, terms to expire December 31, 2014, or until their successors have been appointed. This motion was seconded by Councilman Smith and carried unanimously.

Regarding the remaining vacancy left by Ms. Love, it was the consensus of Council to re-advertise for the remaining vacancy on the Downtown Commission.

**RESOLUTION BOOK NO. 34 – PAGE 240**

**RESOLUTION NO. 12-15 - RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT**

Vice-Mayor Manheimer said that the terms of Ryan Blau, Ashley Featherstone and Matthew Raker, as members on the Sustainable Advisory Committee on Energy & the Environment expired on December 31, 2011.

The following individuals have applied for a vacancy on the Sustainable Advisory Committee on Energy & the Environment: Jeremiah Smith, Hobie Orton IV, Michael Leahey, William Hutchings, Timothy Ballard, Charles Rosenblum and Lael Gray.

Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended reappointing Ryan Blau and Matthew Raker and appointing Lael Gray (as also recommended by the Sustainable Advisory Committee on Energy & the Environment).

Councilman Bothwell moved to reappoint Ryan Blau and Matthew Raker to each serve a three-year term respectfully, terms to expire December 31, 2014, or until their successors have been appointed. This motion was seconded by Councilman Hunt and carried unanimously.

Mayor Bellamy moved to appoint Lael Gray to serve a three-year term, term to expire December 31, 2014, or until her successor has been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 241**

**RESOLUTION NO. 12-16 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND**

Vice-Mayor Manheimer said that the term of Pat Leckey, as a member on the Firemen's Relief Fund, expired on January 1, 2012.

No individuals have applied for a vacancy on the Firemen's Relief Fund.

Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended reappointing Pat Leckey.

Councilman Hunt moved to reappoint Pat Leckey to serve an additional two-year term, term to expire January 1, 2014, or until her successor has been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 242**

**RESOLUTION NO. 12-17 - RESOLUTION APPOINTING MEMBERS TO THE GREENWAY COMMISSION**

Vice-Mayor Manheimer, Chairman of the Boards & Commissions Committee, said that the terms of Marc Hunt, Susan Barlow and Stephanie Pankiewicz, as members on the Greenway Commission expired on December 31, 2011.

The following individuals have applied for a vacancy on the Greenway Commission: Ally Donlan, Mary Weber, Charles Rosenblum and Tony Hauser.

Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended (1) reappointing Susan Barlow; (2) appointing Ally Donlan; and (3) interviewing Mary Weber and Tony Hauser.

Councilman Smith moved to reappoint Susan Barlow to serve an additional three-year term, term to expire December 31, 2014, or until her successor has been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

Councilman Bothwell moved to appoint Ally Donlan to serve a three-year term, term to expire December 31, 2014, or until her successors has been appointed. This motion was seconded by Councilman Hunt and carried unanimously.

It was the consensus of Council to interview Mary Weber and Tony Hauser.

**RESOLUTION BOOK NO. 34 – PAGE 243**

**RESOLUTION NO. 12-18- RESOLUTION APPOINTING A MEMBERS TO THE METROPOLITAN SEWERAGE DISTRICT BOARD**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that the term of Bill Russell, as a member on the Metropolitan Sewerage District Board, expires on January 19, 2012.

No individuals have applied for a vacancy on the Metropolitan Sewerage District Board.

The Boards & Commission Committee recommended reappointing Bill Russell.

Councilman Smith moved to reappoint Bill Russell to serve an additional three-year term, term to expire January 19, 2015, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 244**

**RESOLUTION NO. 12-19- RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE TREE COMMISSION**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that the terms of Brandee Boggs, Amy Kemp and Bob Gale, as members on the Tree Commission, expired on December 31, 2011.

No individuals have applied for a vacancy on the Tree Commission.

The Boards & Commission Committee recommended reappointing Mr. Gale, Ms. Boggs and Ms. Kemp, as did the Tree Commission.

Councilman Bothwell moved to reappoint Bob Gale, Brandee Boggs and Amy Kemp to each serve a three-year term respectively, terms to expire December 31, 2014, or until their successors have been appoint. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 245**

**MOTION AMENDING THE CITY OF ASHEVILLE RULES ON BOARDS & COMMISSIONS REGARDING THE INCLEMENT WEATHER POLICY**

Vice-Mayor Manheimer said that Boards & Commissions Committee reviewed the Inclement Weather Policy for Boards & Commissions. It was the recommendation of the Boards & Commissions Committee that for City Council Committees (H&CD Committee; Planning & Economic Development Committee; Public Safety Committee; Finance Committee; and Boards & Commissions Committee), in the event of inclement weather, it shall be at the Chair's discretion whether or not the meeting is held that day.

Mayor Bellamy asked that the Chairs contact the City Clerk as soon as possible so she can post that information on the City's website and have a press release sent out.

Regarding the Inclement Weather Policy, Mayor Bellamy moved to amend the City of Asheville Rules on Boards and Commissions to include that for City Council Committees (H&CD Committee; Planning & Economic Development Committee; Public Safety Committee; Finance Committee; and Boards & Commissions Committee), in the event of inclement weather, it shall be at the Chair's discretion whether or not the meeting is held that day. This motion was seconded by Councilman Davis and carried unanimously.

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Ms. Kitty Katherine Richards and Ms. Rachael Bliss encouraged Asheville to adopt a resolution to bring our war dollars home.

Brother Christopher Chiaronmonte urged Council to repeal the panhandling ordinance.

Mr. Alan Ditmore asked for some accounting of how Asheville is helping the homeless on a net basis.

Mr. Timothy Sadler spoke about a program in Chicago that is a mobile truck that goes into underserved communities that have difficulty in accessing local fresh food. On another matter, he urged Council to not privatize our water.

Mr. Matthew Byrd asked for clarification on which Council members were serving on the Metropolitan Sewerage Board.

Mr. Kayvon Kazemini felt that corporations have more rights than people as Occupy Asheville was told they were impeding traffic into the Merrill Lynch building; however, he showed pictures of where other cars and trucks were blocking traffic into that same building. He felt that showed selective policing. In addition, he showed Council a copy of the Occupy Asheville community meeting board. He felt that the space outside the City Hall Building is not large enough for Occupy Asheville.

A resident of Asheville felt there are gaps in the service continuum for programs that address the needs of the most vulnerable populations, such as in the areas of severe persistent mental illness as well as substance abuse challenges. There is a recovery model relatively embraced by the State of North Carolina and programs that can be financed through networks drawing on state funds to effectively meet the needs of vulnerable populations using evidence based practice. Mayor Bellamy suggested that she talk to the County Commissioners as health and human services is a function of County government. She did note that when Asheville saw the greatest need, the City contributed money to the County to fund beds.

Vice-Mayor Manheimer said that the Study Committee chaired by Rep. Moffitt will have its first of four meetings on January 23, 2012, at 2:00 in Raleigh. At that time, Rep. Moffitt has asked that the City, MSD and others make presentations to that Study Committee. City Council will be represented. The second meeting will take place in Buncombe County in February. The Study Committee meeting on January 23 will take place in a room in the legislature that you can listen to on your computer. If you to go to the legislative website at ncleg.net you will be able to listen to the live feed. Mayor Bellamy asked the City Manager to see if that link can be placed on the City's website, if possible.

Councilman Bothwell reminded the public that this weekend is the celebration of the Dr. Martin Luther King Jr. On Monday, January 16, there will be conversations across the country sponsored by the American Dream Coalition to discuss rebuilding the American dream. He invited the public to attend that discussion at 271 Tunnel Road at 6:00 p.m.

**Lawsuits**

The following civil action has been commenced in Superior Court on December 7, 2011, and the City was served via certified mail on December 9, 2011, generally described as follows: Charles Long and Nancy Long vs. City of Asheville. The nature of the proceeding is a complaint for negligence, trespass, nuisance and breach of contract – Waterline break at 147 White Pine Drive, property of Charles and Nancy Long. This will be handled by an attorney outside of the City Attorney's Office.

The following civil action has been commenced in Superior Court on December 18, 2011, and is generally described as follows: Jay Fiano and wife, Stacy Fiano vs. City of Asheville. This is a notice of appeal and petition for writ of certiorari as an appeal of the Council's decision to close Moody Alley. This matter will be handled in-house.

**Closed Session**

At 7:28 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation

involving the following parties: Jensen, and others (Biltmore Lake Annexation), City of Asheville, Holly P. Oxner, Jr., Forrest Eugene Weaver, and similarly affected retired and/or active police officers of the City of Asheville. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); and To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 7:50 p.m., Councilman Smith moved to come out of closed session. This motion was seconded by Councilman Hunt and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:50 p.m.

Magdalen Burleson
CITY CLERK

Jan McBellamy
MAYOR

Tuesday – January 24, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; Assistant City Manager Jeffery B. Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Vice-Mayor Manheimer gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING FEBRUARY 2012 AS "BLACK HISTORY MONTH"**

Mayor Bellamy read the proclamation proclaiming February, 2012, as "Black History Month" in the City of Asheville. She presented the proclamation to Mr. Al Whitesides, who briefed City Council on some activities taking place during the month.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 10, 2012**

**B. RESOLUTION NO. 12-20 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICE AGREEMENT WITH BROWN AND CALDWELL FOR THE WATER RESOURCES MAIN TRANSMISSION LINE EVALUATION PROJECT**

**ORDINANCE NO. 4044 - BUDGET AMENDMENT FOR WATER RESOURCES MAIN TRANSMISSION LINE EVALUATION PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to enter into a professional service agreement for the Main Water Transmission Line Evaluation with Brown and Caldwell in the not-to-exceed amount of $319,018.00; and a budget amendment in the amount of $219,018 from savings in the Viewmont Acres Waterline Project that was completed under budget.

The City of Asheville Water Resources Department is seeking the services of a qualified engineering firm to work with staff to develop an assessment of some of the City's main water transmission lines with an overall goal to develop long term planning solutions for the replacement of its most critical water infrastructure. This contract represents part one of a two part project. The successful completion of this first project will result in the delivery of an inventory and condition evaluation of the selected transmission lines and system appurtenances; specifically 61,000 linear feet of 50 year-old 36-inch steel transmission main and 35,000 linear feet of 85 year-old 24-inch cast iron transmission main.

The Water Resources Department issued a Request for Qualifications (RFQ) for Engineering Services related to the project. In response to that RFQ, the department received eight (8) proposals. Companies responding were:

1. Arcadis G&M of North Carolina, INC. – Greensboro, NC
2. Brown and Caldwell – Charlotte, NC
3. Hazen and Sawyer, P.C. – Charlotte, NC
4. Michael Baker Engineering, Inc. – Asheville, NC
5. Stantec – Charlotte, NC
6. The Wooton Company – Raleigh, NC
7. Vaughn & Melton Consulting Engineers – Asheville, NC
8. Willis Engineers – Charlotte, NC

A review team, comprised of staff from the City of Asheville Water Resources Department reviewed these proposals and selected the firm Brown and Caldwell. Subsequent to this selection, Water Resources met with Brown and Caldwell and negotiated an Engineering Services Contract in the amount of $319,018.

This project is part of City Council's strategic plan to maintain city infrastructure and to operate the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- Brown and Caldwell has provided Engineering Services on numerous water system projects for the City of Asheville. Their experience and knowledge of our water system will minimize staff support and input during the process.
- This project will provide the City of Asheville with the first set tools necessary to complete the entire proposed project and ultimately make sound decisions for planning and replacement of its most critical water infrastructure.

Con:

- Failure to award an engineering services contract would prevent the Water Resources Department from completing the necessary planning and replacement of critical water infrastructure in a timely manner.

The Water Resources Department currently has $100,000.00 budgeted for this project. The remaining funds of $219,018 needed for the contract with Brown and Caldwell will be transferred from the Viewmont Acres Waterline Project that was completed under budget.

| | |
|---|---|
| Amount in Viewmont Acres Construction | $269,140.72 |
| Amount Needed for Asset Mgt Plan Update | $219,018.00 |
| Amount Remaining in Viewmont Acres Construction Project | $ 50,122.72 |

The amount remaining in the completed Viewmont Acres Project will be reallocated to other capital projects as the need arises. Staff will seek Council approval on any future reallocation of these funds.

City staff recommends City Council approval of the City Manager to enter into a professional service agreement for the Main Water Transmission Line Evaluation with Brown and Caldwell in the not-to-exceed amount of $319,018; and a budget amendment in the amount of $219,018.00 from savings in the Viewmont Acres Waterline Project that was completed under budget.

**RESOLUTION BOOK NO. 34 – PAGE 246**
**ORDINANCE BOOK NO. 27 - PAGE 255**

**C. RESOLUTION NO. 12-21- - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH T & K UTILITIES INC. FOR THE WATER RESOURCES WATER SERVICE RENEWALS PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with T & K Utilities, Inc., in an amount not to exceed $236,805, for the Water Resources Water Service Renewals Project.

On December 14, 2011, the Water Resources Department issued a Request for Bids for the Water Service Renewals Project. The scope of the project is to renew existing water services that have been identified as sub-standard as part of the department's ongoing Automated Meter Reading (AMR) project. There will be 100 water services renewed as part of this project, including new meter boxes, new meter setters, new connections to the existing house lines, and approximately 2,100 Linear Feet of copper line.

On January 4, 2012, Water Resources received four (4) bids for the project. Companies responding were:

1. T & K Utilities, Inc. – Asheville, NC; $236,805.00 total bid
2. Patton Construction Group, Inc. – Asheville, NC; $273,820.00
3. Huntley Construction Co. – Asheville, NC; $287,331.00
4. Payne, McGinn & Cummins, Inc. – Travelers Rest, SC; $293,093.66

A review team comprised of City staff reviewed these bids and selected T & K Utilities, Inc., as the lowest responsible bidder in the amount of $236,805.00.

This project is part of City Council's strategic plan to maintain and improve city infrastructure and provide local companies with labor opportunities.

Pros:

- Approval of the project will allow Water Resources to renew existing, sub-standard water services to residential houses.
- The project will provide a local company with work for several months.

Con:

- None.

As part of the Automated Meter Reading (AMR) Project, the Water Resources Department has allocated the funds needed for this construction project in the Capital Projects Fund. The AMR Project will reduce meter reading time by 85%, which will reduce meter reading costs in time and allow most Meter Readers to transition to other priority positions within the department. Remote meter reading is already improving customer service by reducing meter reading errors that lead to duplicate field visits and reducing the unit cost of meter reading devices by purchasing them in bulk.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with T & K Utilities in an amount not to exceed $236,805.00 for the Water Resources Water Service Renewals Project.

**RESOLUTION BOOK NO. 34 – PAGE 247**

**D. RESOLUTION NO. 12-22 - RESOLUTION AUTHORIZING THE CITY MANAGER AND/OR MAYOR TO APPLY FOR AND, IF AWARDED, ENTER INTO A GRANT AGREEMENT WITH THE STATE OF NORTH CAROLINA FOR**

**FUNDING OF LAND ACQUISITION FOR REED CREEK GREENWAY, PHASE IV**

Summary: The consideration of a resolution authorizing the City Manager and/or Mayor to apply for and, if awarded, enter into a grant agreement with the State of North Carolina for funding of land acquisition for Reed Creek Greenway Phase IV.

Funds are available through the State of North Carolina, Department of Environment and Natural Resources, Division of Parks and Recreation in the Recreation Trails Program (RTP) to fund trails and trail-related recreational needs. The City of Asheville wishes to submit a grant application for $75,000 for land acquisition of the easements necessary for completion of Phase IV of Reed Creek Greenway.

The RTP grant is a reimbursement grant program which requires a minimum local match of 25%. In order to strengthen the chance of receiving the grant, the City will match the state funding dollar for dollar in the amount of $75,000 which is budgeted in the City's capital improvement budget for greenway development in land acquisition. The City will also provide in-kind services (legal, surveying) in the amount of $5,000 for a total match of $80,000.

The Reed Creek Greenway is an urban greenway that links downtown Asheville, the University of North Carolina-Asheville campus, and adjacent Montford and Five Points neighborhoods. Construction is funded by a grant from the State of North Carolina, Department of Transportation and the City of Asheville capital improvement budget.

The Reed Creek Greenway construction is being implemented in four phases. Phase I is complete and Phase II will be finished in early 2012. The City is partnering with UNC-Asheville to complete Phase III with agreement pending. The grant will substantially assist in acquiring the necessary easements to complete land acquisition for Phase IV and other strategic adjacent parcels along the Reed Creek Greenway. Preliminary design drawings are complete for Phase IV, and construction drawings and construction will follow land acquisition. Staff anticipates budgeting for greenway construction in the FY 2015-2016 capital improvement budget.

This action complies with the City Council Strategic Operating Plan Focus Area- Multimodal Transportation in that it will integrate and implement a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit, greenways, streets, rivers and access to the river, and other system improvements resulting in a funding priority list. This action also complies with the Parks, Recreation, Cultural Arts, and Greenways Master Plan-Increase the Level of Service and Access for Parks, Facilities and Greenways in that it will develop connected greenway corridors and destinations, prioritize a list of needed easements to connect greenways and parks, and complete projects funded from other sources.

Pro:

- If awarded, the grant will provide additional funding for land acquisition which is required to complete Phase IV of Reed Creek Greenway.

Con:

- The grant application process is competitive and a grant award is not guaranteed.

Award of the grant will reimburse the City of Asheville $75,000. As noted above, the match of $80,000 will come from the approved capital improvement budget for land acquisition.

City staff recommends City Council to adopt a resolution authorizing the City Manager and/or Mayor to apply for and enter into an agreement for grant funds with the State of North Carolina, Department of Environment and Natural Resources, Division of Parks and Recreation in the Recreation Trails Program for $75,000 for reimbursement of land acquisition costs for the Reed Creek Greenway Phase IV.

**RESOLUTION BOOK NO. 34 – PAGE 249**

**E. RESOLUTION NO. 12-23 - RESOLUTION TO CONSIDER THE PERMANENT CLOSING OF A PORTION OF SOUTH PACK SQUARE AND SETTING A PUBLIC HEARING FOR FEBRUARY 28, 2012**

Summary: The consideration of a resolution of intent to permanently close a portion of S. Pack Square, and setting a public hearing on February 28, 2012.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjacent property owner The City of Asheville has requested the City of Asheville to permanently close a portion of S. Pack Square.

The proposed permanent closure of a portion of S. Pack Square has been placed on the Greenway Commission's agenda at their regular meeting on January 12, 2012, and approved the closure unanimously.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of intent to permanently close a portion of S. Pack Square, and setting a public hearing on February 28, 2012.

**RESOLUTION BOOK NO. 34 – PAGE 250**

**F. RESOLUTION NO. 12-24 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE CONTRACT WITH AMEC (PREVIOUSLY MACTEC) TO INCREASE SPECIAL INSPECTIONS AND TESTING SERVICES FOR THE PARKING GARAGE LOCATED AT 51 BILTMORE AVENUE**

Summary: The consideration of a resolution authorizing the City Manager to execute an amended contract with AMEC (MACTEC) in the amount of $9,400 to provide additional special inspection and construction materials testing for the parking garage at 51 Biltmore Avenue.

The City of Asheville contracted with AMEC (formally MACTEC) in the amount of $46,000 to perform special geotechnical and material inspections as well as testing. The contract was amended in August 2011 in the amount of $27,500 due to the fact that we encountered some issues on the site that increased the need for additional geotechnical testing and inspections. These issues include additional fill material on the site that required additional excavation. Additional testing had to be performed to make sure the sub-surface was compacted. In the same vein, the soil wall had to be extended. This required additional soil nail installation and inspection. Finally, due to the compressed schedule of the project, more overtime hours are required to perform these inspections. Some of these overtime cost will be reimbursed by the contractor in a change order deduct.

Since the first amendment in August 2011, the consultant has been asked to increase the hours of inspection due to the expedited schedule of the project. The increase in cost is $9,400 for a total contract amount of $82,900. We do not expect any additional changes to this contract.

This project complies with the City's Parking Action Plan. Additionally, the action complies with Job Growth and Community Development by supporting a dynamic and robust local economy with balanced and sustainable growth.

Pros:

- Insures that proper oversight, inspection and testing are performed by qualified professionals and in the best interest of the City.
- Reduces liability in releasing the retainage on the project.

Con:

- Additional cost of $9,400.

The parking garage portion of the project is approximately 73% complete. We have paid $5.5 million of the $7.5 million contract amount. To date we have approved $35,000 in change orders (less than 0.5%). The budget includes a 10% contingency as part of the project cost. The increase in the Kimley-Horn amendment will reduce the amount of contingency to $563,000. This amendment will decrease the contingency to $526,100. We do not anticipate any significant change orders on this project. This amendment will not increase the budget for the entire project.

Staff is recommending City Council authorize the City Manager to execute an amended contract with AMEC (MACTEC) in the amount of $9,400 to provide additional special inspection and construction materials testing for the parking garage at 51 Biltmore Avenue.

**RESOLUTION BOOK NO. 34 – PAGE 252**

**G. RESOLUTION NO. 12-25 - RESOLUTION AMENDING THE CITY COUNCIL 2012 MEETING SCHEDULE TO ADD A CITY COUNCIL RETREAT ON FRIDAY, FEBRUARY 3, 2012, AT UNC-ASHEVILLE IN THE WILMA M. SHERRILL CENTER**

**RESOLUTION BOOK NO. 34 – PAGE 253**

**H. RESOLUTION NO. 12-26 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH THE HOUSING AUTHORITY FOR A PORTION OF REAL PROPERTY KNOWN AS THE W.C. REID CENTER LOCATED AT 144 LIVINGSTON STREET**

Summary: The consideration of a resolution authorizing the City Manager to enter into a Lease Agreement with the Housing Authority of the City of Asheville for a portion of real property known as the W.C. Reid Center, located at 133 Livingston Street.

On January 25, 2011, the Asheville City Council authorized the Mayor to enter into an agreement for the disposition of City-owned property at 133 Livingston Street to the Housing Authority for the purpose of using the property as a community-based education and training center. As a condition of sale, the City required a lease-back of the W.C. Reid Center gymnasium and gym storage, one office, and a shared conference room, so that the Parks Department may continue to provide recreation programming in the gymnasium. The City will pay one-half of the cost of electricity, heat, water and other utility charges for the property during the three year lease period.

At this point, the Housing Authority has completed all necessary due diligence and a closing date is anticipated for January 26th 2012. Pending Council approval, the lease-back to the City of Asheville will commence on the day of closing.

This action complies with the City Council Strategic Operating Plan as follows: (1) *Job Growth & Community Development:* A lease of property allows the City to provide continued gymnasium access to the community, while future phases of the Grant Center are implemented.

Pro:

- Continued recreation programming for the community.

Con:

- None.

The annual cost for one-half of the utilities at the W.C. Reid Center is estimated at $31,000. This utility expense is already included in the Park, Recreation and Cultural Arts Budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute the lease agreement with the Housing Authority of the City of Asheville, for a portion of the WC Reid Center property at 133 Livingston Street.

**RESOLUTION BOOK NO. 34- PAGE 254**

**I. RESOLUTION NO. 12-27 - RESOLUTION AUTHORIZING EXECUTION OF A UTILITY EASEMENT ACROSS CITY PROPERTY AT THE WILLIAM DEBRUHL WATER TREATMENT PLANT AT 1370 BEE TREE ROAD IN SWANNANOA NC TO RELOCATE A POWER LINE**

Summary: The consideration of a resolution granting Progress Energy a utility easement over city property at the William DeBruhl Water Treatment Plant.

The City of Asheville owns the property at the William DeBruhl Water Treatment Plant at 1370 Bee Tree Rd in Swannanoa, NC. As part of Progress Energy's utility maintenance, they need to relocate the power line that runs to the water plant. Progress Energy needs an easement to run the power line from the spillway bridge along the creek to where the existing line is now.

The easement that is being requested would be 30 feet in width and approximately 1,150 feet in length. In addition, Progress Energy would be permitted to construct and maintain its line (including poles, cables, wires, guys, anchors, underground conduits, and other pertinent facilities) and to keep the area cleared of trees, undergrowth, or any other obstructions that may endanger or hinder their operation and maintenance.

This project is part of City Council's strategic plan to leverage external partnerships for pursuing infrastructure improvements.

Pro:

- The new utility pole will update aging infrastructure that supplies power to the water plant.

Cons:

- May require periodic trimming / removal of vegetation within the easement area.
- The City cannot use the area in a manner that interferes with the easement.
- The City will have to ensure that future uses of the property are compatible with the easement.

There is no fiscal impact.

Water Resources staff recommends adoption of the resolution authorizing the Mayor to execute the easement, subject to approval by the City Attorney.

**RESOLUTION BOOK NO. 34 – PAGE 255**

**J. RESOLUTION NO. 12-28 - RESOLUTION AMENDING RESOLUTION NO. 12-11 AUTHORIZING THE MAYOR TO AMEND THE CONTRACT WITH DIXON HUGHES GOODMAN LLP FOR AUDITING SERVICES FOR FISCAL YEAR 2010-2011**

**RESOLUTION NO. 12-29 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH DIXON HUGHES GOODMAN LLP FOR AUDITING SERVICES FOR FISCAL YEAR 2011-2012**

Summary: On January 10, 2012, City Council authorized the City Manager to sign an amended contract with Dixon Hughes Goodman LLP for auditing services for Fiscal Year 2010-11. In addition, on January 10, 2012, City Council authorized the City Manager to execute a contract with Dixon Hughes Goodman LLP for auditing services for Fiscal Year 2011-12.

Pursuant to Local Government Commission requirements, the Mayor must execute these agreements on behalf of City Council.

**RESOLUTION NO. 12-28 - RESOLUTION BOOK NO. 34 – PAGE 257**
**RESOLUTION NO. 12-29 - RESOLUTION BOOK NO. 34 – PAGE 258**

**K. ORDINANCE NO. 4045 - ORDINANCE CHANGING THE SPEED LIMIT TO 25 MPH ON SOUTH FRENCH BROAD, SOCO STREET, SHADY OAK DRIVE, BELMONT AVENUE, BROWNWOOD AVENUE, HANOVER STREET, MANILA STREET, STONEBRIDGE DRIVE AND VANDERBILT PARK DRIVE**

Summary: The consideration of an ordinance to enact and/or change a speed limit on South French Broad, Soco Street, Shady Oak Drive, Belmont Avenue, Brownwood Avenue, Hanover Street, Manila Street, Stonebridge Drive, and Vanderbilt Park Drive.

According to state law (NCGS # 20-141), the statutory speed limit in North Carolina is 35 mph inside municipal corporate limits for all vehicles and 55 mph outside municipal corporate limits for all vehicles except for school buses and school activity buses.

Furthermore, local authorities may authorize by ordinance higher speeds or lower speeds than the statutory 35 mph speed limit on locally-maintained streets provided that the higher speed limit cannot exceed 55 mph. Speed limits authorized by local authorities are effective when the appropriate signs are erected.

City staff recently completed traffic engineering investigations and determined that a 25 mph speed limit would be reasonable and safe on the following streets. The subject streets primarily serve residential areas and established neighborhoods. They are South French Broad Avenue from Choctaw Street to the End of City Maintenance, Soco Street from Cumberland Avenue to Montford Avenue, Shady Oak Drive from London Road to the Dead End, Belmont Avenue from Haywood Road to Sulphur Springs Road, Brownwood Avenue from Waynesville Avenue to Beverly Road, Hanover Street from Haywood Road to Cordova Street, Manila Street from Springside Drive to Sand Hill Road, and Stonebridge Drive in its entirety.

Additionally, City Staff recently completed traffic engineering investigations and determined that a 25 mph speed limit would be reasonable and safe on Vanderbilt Park Drive from Hendersonville Road to End of City Maintenance. This road primarily serves office buildings

and has numerous driveways and entrances. There is also a potential for a large amount of pedestrians due to existing and proposed sidewalks and proposed developments.

This action complies with the City Council Strategic Operating Plan in the Safety focus area by improving the "street experience" for all users including pedestrians, bicycles, and motorists in a primarily residential corridor.

Pros:

- City staff has been able to respond favorably to citizen's requests.
- The new speed limit will be consistent with roads of like character and design.
- Based on the 85th percentile speeds, most drivers would adhere to a 25 mph posted speed limits on these roads.

Cons:

- The initial cost to install the appropriate speed limit signs is about $4,000.00.
- Typically, speed limit signs have a serviceable life of five to seven years.

The initial cost to install the appropriate speed limit signs is about $4,000.00 and is included in the current operating budget for the Transportation Department.

City staff recommends that City Council approve an ordinance enacting and/or changing a 25 mph speed limit on South French Broad Avenue from Choctaw Street to the End of City Maintenance, Soco Street from Cumberland Avenue to Montford Avenue, Shady Oak Drive from London Road to the Dead End, Belmont Avenue from Haywood Road to Sulphur Springs Road, Brownwood Avenue from Waynesville Avenue to Beverly Road, Hanover Street from Haywood Road to Cordova Street, Manila Street from Springside Drive to Sand Hill Road, Shady Oak Drive from London Road to Dead End, Stonebridge Drive in its entirety, and Vanderbilt Park Drive from Hendersonville Road to End of City Maintenance.

**ORDINANCE BOOK NO. 27 – PAGE 257**

**L. ORDINANCE NO. 4046 - ORDINANCE CHANGING THE SPEED LIMIT TO 20 MILES PER HOUR ON SCHENCK PARKWAY, COLUMBINE ROAD, DEARBORN STREET, EAST SCHENCK CRESCENT, STAMFORD STREET, THETFORD STREET, TOWN SQUARE BOULEVARD, AND WALTERSTONE ROAD IN BILTMORE PARK IN SOUTH ASHEVILLE; CROWNINGWAY DRIVE AND CUMMINS ROAD IN EAST ASHEVILLE; AND UNIVERSITY HEIGHTS IN NORTH ASHEVILLE**

Summary: The consideration of an ordinance to enact and/or change a speed limit on Schenck Parkway, Columbine Road, Dearborn Street, East Schenck Crescent, Stamford Street, Thetford Street, Town Square Boulevard, and Walterstone Road in Biltmore Park, South Asheville. Additionally, the ordinance will enact a speed limit on Crowningway Drive and Cummins Road in East Asheville and University Heights in North Asheville.

According to state law (NCGS # 20-141), the statutory speed limit in North Carolina is 35 mph inside municipal corporate limits for all vehicles and 55 mph outside municipal corporate limits for all vehicles except for school buses and school activity buses.

Furthermore, local authorities may authorize by ordinance higher speeds or lower speeds than the statutory 35 mph speed limit on locally-maintained streets provided that the higher speed limit cannot exceed 55 mph. Speed limits authorized by local authorities are effective when the appropriate signs are erected.

City staff recently completed an engineering and traffic investigation and determined that a 20 mph speed limit would be reasonable and safe on East Schenck Crescent from Thetford

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Street to Schenck Parkway, Stamford Street from Thetford Street to Schenck Parkway, Thetford Street from Stamford Street to Schenck Parkway, Town Square Boulevard from Thetford Street to its northern intersection with Schenck Parkway, Walterstone Road from Thetford Street to Stamford Street, Schenck Parkway from Thetford Street to its northern intersection with East Schenck Crescent, Columbine Road from Town Square Boulevard to East Schenck Crescent, and Dearborn Street from Town Square Boulevard to East Schenck Crescent. In addition, since this area of Biltmore Park has the same characteristics of a central business district, it is reasonable to enact a 20 mph speed limit. The subject streets have on street parking and a large amount of pedestrian and bicycle activity.

City staff recently completed an engineering and traffic investigation and determined that a 20 mph speed limit would be reasonable and safe on University Heights from the northern intersection with Edgewood Road to the southern intersection with Edgewood Road. The subject street primarily serves the University of North Carolina at Asheville and is subject to high levels of pedestrian traffic with numerous crosswalks. Because of this characteristic of the road, City Staff feels that the lower speed limit is warranted and will be effective.

City staff recently completed an engineering and traffic investigation and determined that a 20 mph speed limit would be reasonable and safe on Crowningway Drive from Sunset Summit to Patton Mountain Road (SR 2049). This lower speed limit will be effective due to the topography of the roadway and is consistent with surrounding roads.

This action complies with the City Council Strategic Operating Plan in the Safety focus area by improving the "street experience" for all users including pedestrians, bicycles, and motorists in a primarily residential corridor.

Pros:

- City staff has been able to respond favorably to neighborhood requests.
- City staff has been able to respond favorably to a request from the University of Asheville.
- The 20 mph speed limits are consistent with roads of similar design and character.

Cons:

- The initial cost to install the appropriate speed limit signs is about $2,000.
- Typically, speed limit signs have a serviceable life of five to seven years.

The initial cost to install the appropriate speed limit signs is about $2,000 and is included in the current operating budget for the Transportation Department.

City staff recommends that City Council approve an ordinance enacting and/or changing a 20 mph speed limit on East Schenck Crescent from Thetford Street to Schenck Parkway, Stamford Street from Thetford Street to Schenck Parkway, Thetford Street from Stamford Street to Schenck Parkway, Town Square Boulevard from Thetford Street to its northern intersection with Schenck Parkway, Walterstone Road from Thetford Street to Stamford Street, Schenck Parkway from Thetford Street to its northern intersection with East Schenck Crescent, Columbine Road from Town Square Boulevard to East Schenck Crescent, and Dearborn Street from Town Square Boulevard to East Schenck Crescent in the Biltmore Park neighborhood in South Asheville. Additionally, City Staff recommends that City Council approve an ordinance enacting and/or changing a 20 mph speed limit on University Heights from the northern intersection with Edgewood Road to the southern intersection with Edgewood Road and Crowningway Drive from Sunset Summit to Patton Mountain Road (SR 2049).

Director of Transportation Ken Putnam was pleased to recognize Mr. Jeff Moore, the City's new Traffic Engineer.

**M. RESOLUTION NO. 12-30 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT WITH BETSCH ASSOCIATES/PBC+L FOR ADDITIONAL DESIGN SERVICES RELATED TO THE CIVIC CENTER RENOVATION PROJECT**

Summary: The consideration of a resolution to authorize the City Manager to execute an amendment to the professional services contract with Betsch Associates/PBC+L for additional design services related to the Civic Center renovations in the amount of $22,295 for a total contract amount not to exceed $848,000 for Phase II of the project.

Betsch Associates/PBC+L has provided design services for project components that were anticipated in the preliminary design as well as design for some components arising from issues not anticipated during the initial design phases and issues detected after the preliminary demolition phases were completed. This amendment covers items including design of replacement office space that was eliminated as a result of elevator placement and other issues as the project has moved to completion of the current phase of construction.

This action complies with the City Council Strategic Operating Plan's Fiscal Responsibility goal of developing strategic partnerships to leverage resources for infrastructure and CIP projects. This action also complies with the Civic Center Commission Master Plan that encourages continuing renovations for the facility, and supports the goal of developing new partnerships. It has been reviewed and recommended by the Civic Center Commission.

Pros:

- Action updates the professional services contract to meet the obligations for the required design necessitated by unforeseen conditions at the beginning of the design.
- Action meets the requirements to facilitate the Southern Conference, and the resulting economic impact.
- Action will support improved facilities in the renovated facility.
- Action leverages significant partnership funding to allow for greater levels of renovation.

Con:

- None. Funding for this has previously been approved in the project budget.

Funding for this professional services contract amendment is already budgeted and approved in the current Capital Budget for the Project, so no additional funding is required. The amount of the amendment will come from the approved project contingency.

Staff recommends approval of a resolution to authorize the City Manager to execute an amendment to the professional services contract with Betsch Associates/PBC+L for additional scope of design services for the Asheville Civic Center Renovations in the amount of $22,295.

**RESOLUTION BOOK NO. 34 – PAGE 259**

**N. ORDINANCE NO.4047 - BUDGET AMENDMENT IN THE HOUSING TRUST FUND FROM SALE OF LAND AND HOUSING TRUST FUND RESERVES TO FULLY BUDGET PLANNED EXPENDITURES FOR FISCAL YEAR 2011-12**

Summary: The consideration of a budget amendment in the Housing Trust Fund, in the amount of $412,672, from sale of land and Housing Trust Fund reserves to fully budget planned expenditures for Fiscal Year 2011-12.

In FY 2000-01, the City established the Housing Trust Fund to provide financing for affordable housing initiatives in the City. Each year since FY 2000-01 City Council, as a part of

the budget process, has approved an annual transfer from the General Fund to the Housing Trust Fund. This transfer, combined with program income, provides ongoing funding for affordable housing initiatives. The adopted FY 2011-12 budget for the Housing Trust Fund, which totaled $450,000, was funded by a $300,000 General Fund transfer as well as $150,000 in anticipated program income.

The adopted FY 2011-12 expenditure budget included $62,672 in administrative expenses, which left $387,328 in budget authorization available for disbursements of loan proceeds. However, based on loan disbursements already approved by Council, the budget for FY 2011-12 needs to be increased by $412,672. The table below outlines the total expected loan expenditures for FY 2011-12 as well as administrative expenses.

| | |
|---|---|
| Administrative Expenses | $62,672 |
| K Booth – Shiloh Road (Loan approved March 2011) | $80,000 |
| MHO - Eagle Market Place (Loan approved March 2011) | $300,000 |
| Beaucatcher Properties - (loan approved February 2012) | $200,000 |
| MHO – Glen Rock Hotel (loan approved February 2012) | $220,000 |
| | |
| Total | $862,672 |

As noted above, in order to provide budget authorization for these expenditures of $862,672, the Housing Trust Fund budget needs to be increased by $412,672. The City expects to receive $300,000 in unbudgeted revenue from the sale of land to Asheville Area Habitat for Humanity in the current fiscal year, which will provide a portion of the funding for the budget amendment. The remaining $112,672 in budget authorization will come from available Housing Trust Fund reserves.

The Housing & Community Development Committee has been informed of the budget and fiscal impact.

This action complies with the City Council Strategic Operating Plan goal of "Operate the City of Asheville to the highest levels of fiscal responsibility."

Pro:

- Provides the required budget authorization for expenditures that are expected to occur in the Housing Trust Fund in FY 2011-12.

Con:

- None.

All of the disbursements that have occurred or are planned prior to June 30, 2012 have already been approved by City Council. This budget amendment will simply provide the required budget authorization to execute the disbursements. Upon the sale of land as described above and the receipt of regular loan repayments, the Housing Trust Fund will have sufficient cash to make the authorized disbursements. Our procedure is to disburse funds only when there is a sufficient cash balance, on a first come, first serve basis. Once these disbursements are made, however, available cash for Housing Trust Fund loans will have been fully spent for FY 2011-12.

City staff recommends City Council adopt a budget amendment in the Housing Trust Fund, in the amount of $412,672, from sale of land and Housing Trust Fund reserves to fully budget planned expenditures for Fiscal Year 2011-12.

**ORDINANCE BOOK NO. 27 – PAGE 259**

**O. ORDINANCE NO. 4048 - BUDGET AMENDMENT AUTHORIZING THE DISPOSTION OF REAL PROPERTY KNOWN AS THE W.C. REID CENTER LOCATED AT 133 LIVINGSTON STREET**

Summary: The consideration of a budget amendment, in the amount of $254,500, authorizing the disposition of real property located at 133 Livingston Street, known as the W.C. Reid Center.

This budget amendment establishes a project budget within the General Capital Projects Fund related to the disposition of the W.C. Reid Center to the Housing Authority of the City of Asheville. The sale of this property was approved by City Council on January 24, 2011 with the sales price of the property based on appraisal at $254,500. The proceeds from the sale will fund the next phase of development for the Dr. Wesley Grant Senior Southside Center.

This action complies with the City Council Strategic Operating Plan as follows: (1) *Fiscal Responsibility*: The proceeds from the sale would yield funds to support the City in pursuing development of Phase II of the Dr. Wesley Grant Senior Southside Center which would be for the development of the splash ground and/or construction documents for the development of the gymnasium.

Pros:

- Sales price based on fair market value
- Housing Authority plans to preserve and rehabilitate the Reid Center as a community education and training center
- Provides funding for the next phase of development for the Dr. Wesley Grant Senior Southside Center.

Con:

- None

As noted above, the proceeds of the sale are estimated at $254,500. The funds will be used to increase the project budget in the General Capital Projects Fund for the next phase of development for the Dr. Wesley Grant Senior Southside Center.

City staff requests City Council to adopt a budget amendment of $254,500 authorizing the disposition of 133 Livingston Street, known as the W.C. Reid Center, to the Housing Authority of the City of Asheville.

**ORDINANCE BOOK NO. 27 – PAGE 261**

**P. ORDINANCE NO. 4049 - BUDGET AMENDMENT FROM LETTER OF CREDIT FROM MOUNTAIN 1ST BANK & TRUST TO COMPLETE THE CONSTRUCTION OF THE MILL CREEK CONDOMINIUM PROJECT**

Summary: The consideration of a budget amendment, in the amount of $38,207, to appropriate funds from a letter of credit from Mountain 1st Bank & Trust to complete the construction of the Mill Creek Condominium project.

On March 25, 2011, a letter to Carolina 1st Bank and Trust was issued from the City's Planning & Development Department requesting that the Letter of Credit that was initially issued on March 26, 2010 be drawn. This was required due to the project being left incomplete, based on financial difficulty from the developer Mill Creek Developers, LLC.

The City received the check for $38,206.65 on June 30, 2011. This was the requested amount in the aforementioned letter. These funds will be used to hire a consultant to administer

the construction contract, and a construction contract to install sidewalk and landscaping. This work will complete the project.

The project complies with Council's Strategic plan in the Focus Area of Green & Sustainability, as it will include the planting of approximately 87 trees, which will provide shade, natural habitat and aesthetic improvements to the area. The project also addresses the Focus area of Multimodal Transportation, due to the new sidewalk to be installed.

Pros:

- Approval of this action will allow for the completion of the Mill Creek Condominium project, providing a completed residential community within the ETJ.
- Utilize developer funds, thus not requiring any additional funds from the General Fund.
- While the project isn't located within the existing City Limits, it does lie within our ETJ. This action would insure that if the area was to be in the City Limits in the future, it would be compliant with the UDO.

Con:

- The project will require staff time to oversee a project outside of the current City Limits.

As noted above, the funding for these infrastructure improvements will come solely from money received via the letter of credit, thus there is no impact to the City's budget.

City staff recommends City Council adopt a budget amendment in the amount of $38,207 to complete the Mill Creek Condominium project.

**ORDINANCE BOOK NO. 27 - PAGE 263**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. ETHNIC MINORITY BUSINESS CAPITAL ALLIANCE REPORT

Community Development Director Jeff Staudinger said that as a result of a four month deliberative process, the Ethnic Minority Business Capital Alliance offers a final report, including its findings and recommendations.

The concept of the "Ethnic Minority Business Capital Alliance" arose from an analysis presented to the City by the Asheville SCORE chapter late in 2010 that examined the status of business ownership by ethnic minorities in Asheville. Drawn from 2000 and 2007 U.S. Census reports, the data indicated that ethnic minorities participation in business ownership lagged far behind what might be expected from the percentage of population these minorities comprised. That report also reflected upon most recent available city contracting information, which indicated a similar disparity.

Community members including Dee Williams and Al Whitesides proposed to city staff and elected officials that a diverse group of community leaders be assembled to examine the causes and possible strategic responses to this issue. The request was presented to the Housing and

Community Development Committee. In response they endorsed the establishment of the Ethnic Minority Business Capital Alliance in June of 2011, and supported a $10,000 expenditure from the Office of Economic Development for contracted staff to support this effort. With the endorsement of the HCD Committee, an invitation was issued from the Mayor's office to a diverse group of community members to join in this investigation. The group agreed upon a four month process with a well-defined scope of work that would lead to a set of recommendations for action.

Over 40 persons participated in this process. Participants included African-American entrepreneurs and business people, representatives of business service providers such as the Small Business Technical Development Center and AB Tech, community-based lenders and Community Financial Development Institutions including self-Help and Mountain BizWorks, representatives from grass roots community organizations including Just Folks and Green Opportunities, the Asheville Housing Authority and others. City staff from the Community Development Division and Office of Economic Development also provided support for the process.

The report has been reviewed by the Housing and Community Development Committee, which recommends its presentation to Council. Staff anticipates that applications for Community Development Block Grant funding or Outside Agency funding will be submitted by parties interested in implementing these recommendations.

Mr. Al Whitesides, Chairman of the Alliance, reviewed with Council the report outlining their process, findings and recommendations. Said findings and recommendations are below:

**"Alliance Findings and Recommendations**

The following specific findings and recommendations were approved by the Alliance members present at the December 14, 2011, meeting.

1. **Technical Assistance – Need for improved outreach and coordination of technical assistance services**

**Solution:** The City should work with service providers to help ensure effective outreach to ethnic minorities seeking to start businesses. Service locations should be easily accessible to ethnic minority persons. Organizations and businesses dedicated to serving ethnic minorities should be consulted and employed in outreach.

**Solution:** Technical assistance for small businesses needs to be complemented by one-on-one case management, collaboration, and coordination with other service providers. Case management can facilitate both in-house and external services.

Client case management functions may include management and technical assistance, financial planning, loan packaging, procurement and contracting assistance, networking and marketing, advocacy, and facilitating mentoring services.

2. **Capital Gap – Lack of Collateral and Credit**

**Solution:** Capital funds need to be targeted to assisting ethnic minority businesses, and be available to assist these businesses at varying stages of business development, from start-up to emerging or expanding. The capital should be available both as direct loans and as funds to guarantee or otherwise collateralize loan funds from other sources.

**Solution:** Local and state MBE officials need to be engaged in developing concrete and effective strategies to increase ethnic minority contracting with public entities.

**Solution:** A joint payables program should be established for lenders and vendors to assist ethnic MBE firms and other small businesses in contracts/procurement.

**Solution:** Public entities should facilitate accounts receivable financing available to assist all businesses, as needed. Local and state governments should provide ten (10) day payments of invoices and electronic payments via credit card and check. "Section 3" provisions of HUD contracts should be used to promote hiring/contracting of individuals and firms who meet Section 3 qualifications.

**Solution:** Establish a local chapter of the Carolinas Minority Supplier Development Council, giving MBE Members access to the Business Consortium Fund.

3. **Organizational Support – Need for dedicated leadership and structure to focus on delivery of capital and technical assistance**

**Solution:** Community Development Financial Institutions (CDFIs), either new or existing, that directly address the needs of underserved ethnic minority businesses in Asheville and Buncombe County should be supported. Supported organizations should provide leadership in developing a synergistic infrastructure of funding, excellent technical assistance, meaningful networking and marketing opportunities. Organizations should provide case management for ethnic minority business clients while collaborating and coordinating with outside service providers as necessary.

Any supported entity must be performance-driven and must function with transparency, accountability to the community, and provide customer service which is surveyed on a regular basis.

**Solution:** Existing service providers should be utilized to the maximum extent possible.

**Solution:** Establish a Council-appointed Committee to continue to focus on the issues of ethnic-minority business formation and support. The Alliance suggests that the Committee membership be comprised of representatives from each of the following:

(1) Just Folks
(2) Green Opportunities
(3) SCORE
(4) SBTDC
(5) AB Technical College
(6) Mountain Bizworks
(7) Eagle-Market Streets Development Corp.
(8) Urban-News
(9) Mount Zion Development Corp.
(10) at-large member from low-income community
(11) Council Liaison

4. **Need for greater understanding of challenges faced by ethnic minority entrepreneurs**

**Solution:** The City and its economic development partners should survey existing ethnic minority business owners to understand their needs and engage them as models for new entrepreneurs."

Mr. Whitesides continued to review the Alliance final report. He said the next step is to place an Ethnic Minority Business Resource Center at the YMI Cultural Center. The YMI's mission is to enhance the economic, social and cultural lives of African Americans in Western North Carolina. He provided the Council with a proposal request for interim funding from the City

to the YMI Cultural Center for a period of February 10, 2012 – September 30, 2012, in the amount of $79,136, along with a line item budget. The funds would be used for operating funds to support an intensive fund-raising plan for the YMI to set up this Minority Business Resource Center, so that the business plan for the Resource Center, and the job training component can be completed, along with the applications to establish loan pool funds and operating funds from the federal government and private foundations.

Councilman Hunt supported the focus of the local Community Development Financial Institutions (CDFI) and other non-profit entities working together in a work group.

Upon inquiry of Mayor Bellamy, City Attorney Oast said that staff's recommendation is that Council receive the report. There are a number of recommendations, many which would require fleshing out the details, including legal details. And, some recommendations may be pursued immediately. He suggested Council receive the report and perhaps refer it to the Housing & Community Development (HCD) Committee for further direction on which of the recommendations can be implemented or which may require further investigation.

Councilman Davis, Chair of the HCD Committee, and Vice-Mayor Manheimer said that the Committee heard the report but did not recall any mention of a funding request.

Mr. Staudinger said that the Alliance report was presented to the HCD Committee, upon their recommendation for the Committee to receive the report. The funding request was not part of the Alliance recommendation. He believed it was a response to the Alliance's recommendations by a group of citizens. It was not received by staff until this meeting. He reiterated that this is an independent request and was not part of the Alliance report.

Assistant City Attorney Martha McGlohon felt it would be appropriate for Council to direct staff which recommendations they would like for staff to further research. She noted there are some legal concerns related to some of the recommendations.

After a brief discussion, it was the consensus of Council to receive the report and to direct Ms. McGlohon meet with Mr. Staudinger and review all four recommendations to see which are legally permissible. Those results will be presented to the HCD Committee. At such time as the report is presented to Council, City Attorney Oast said that a staff report will contain pros and cons, along with a fiscal impact statement regarding the funding request.

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING FOR WHITE OAK GROVE APARTMENTS LOCATED AT 275 AND 281 HAZEL MILL ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY DENSITY DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF 92 APARTMENT UNITS HOUSED IN THREE BUILDINGS

Urban Planner Julia Fields said that this is the consideration of an ordinance to conditionally zone White Oak Grove Apartments located at 275 and 281 Hazel Mill Road from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the development of 92 apartment units housed in three buildings. This public hearing was advertised on January 13 and 20, 2012.

Ms. Fields said that the applicant is requesting conditional zoning for two parcels located off Hazel Mill Road from RM-8 (Residential Multi-Family Medium Density District) to RM-16 (Residential Multi-Family High Density District) in accordance with Section 7-7-8 of the UDO to accommodate the development of a multi-family residential proposal (92 units).

The project site consists of two parcels located off of Hazel Mill Road, just north of Patton Avenue, with frontage along Clayton Avenue, Hazel Mill Road and Nancy Street. The project proposes a recombination which would result in an overall project area of 6.501 acres (according to site plans). The subject parcels and adjacent lots are zoned RM-8 with HB, Institutional, Office, Resort and RS-8 zoning in the general vicinity. The immediate surrounding neighborhood is a mix of single-family homes as well as multiple residences on larger parcels.

There are two dwellings and several associated structures existing on the parcels, which will be removed for this project.

The applicant is proposing to construct a multi-family complex that will consist of three (3) buildings. Building A is proposed to contain 28 dwelling units in a 3/4 split configuration. Buildings B and C are proposed to contain 32 units in each building with a 4/5 and 3/4 split configuration with a maximum height of 40 feet per building code (the tallest feature on the larger buildings is 61' 4 9/16" to the top of the roof peak on the five-story side and 51' 8 5/16" on the four-story side). A mix of two and three-bedroom units is proposed for the 92 units. The buildings will meet the North Carolina Healthy Built Homes program and Energy Star certifications. Additionally, 10% of the units (9) will be available as affordable housing.

Access to the site is proposed in three locations – two driveways off of Clayton Avenue and a single access point from Hazel Mill Road at the southeastern corner of the site, near Nancy Street. Following a traffic impact study done for the proposed development, the access point off of Hazel Mill Road will be right in, right out only. A total of 184 parking spaces are provided to serve the residential units and are located around the 2-way looped interior drive (which is essentially a circular parking area). A five to six-foot sidewalk is proposed around the interior of the looped-drives facing the buildings as well as along the driveway providing access to Hazel Mill Road. Sidewalk is also proposed along Clayton Street; however a fee-in-lieu is requested along Hazel Mill Road due to topographic challenges as well as a desire to preserve existing vegetation. The developer is proposing the construction of a bus shelter at the corner of Hazel Mill and Clayton.

Street trees will be required along all street frontages. The project will also include building impact and parking lot landscaping, a required street buffer and the preservation of some existing vegetation along Hazel Mill Road. The applicant is proposing 2.15 acres (33%) of the site as tree save area and 1.24 acres as designated open space (more than the required 500 square feet per unit).

Under the current RM-8 zoning, the combined site would be permitted a total of approximately 56.6 units. The development proposes 92 units, under the 113 units allowable under RM-16 zoning.

The Technical Review Committee (TRC) evaluated this request on August 1, 2011, and it was approved with conditions. At initial review the project was proposed for 108 units.

At their meeting on September 7th, the Planning & Zoning Commission reviewed the initial proposal (108 units) and due to substantial public comment regarding potential negative traffic impact, requested that the applicant provide a traffic impact study for the development. Additionally, comments were received regarding the project being out of scale with the surrounding neighborhood and concerns that the applicant does not necessarily intend to be the developer.

While the project did not trigger the City's thresholds to require a Traffic Impact Study, the Commission recommended (by a 3-0 vote) that the project be continued to the November 2nd meeting so that a Traffic Impact Study (TIS) could be undertaken by the applicant. The project was continued again to the meeting on December 7th so that the TIS could be completed and reviewed by the City's Transportation Department.

At the meeting on December 7th, the Commission heard reports from the City's Traffic Engineer and the traffic engineer for the project. These reports indicated that even considering the "worst case" scenarios for traffic that might be generated from this project, it was felt that it the project would not cause undue traffic congestion along the existing street infrastructure. The right in, right out only configuration for the access point on Hazel Mill Road was accepted.

At this same meeting, the Commission continued to express concerns over the scale of the buildings and the density. The developer agreed to a continuance to look at reducing the size of the project.

The project was reviewed for a third time by the Planning and Zoning Commission on January 4, 2012. At this meeting the developer presented the current project proposal. The dwelling unit count was reduced from 108 to 92 (with the requisite parking reductions) and one floor from each of the ends of Buildings B and C has been removed creating a 3/4 split on the ends of the buildings. Following deliberation, the Planning and Zoning Commission voted 6-0 to recommend this development to the City Council.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. That the proposed use or development of the land will not materially endanger the public health or safety.
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.
   The proposed use and development of the land is compatible with the natural features and topography of the site as well as the surrounding area. Appropriate landscaping and open space will be provided to that is fitting and compatible with the residential neighborhoods surrounding this location, with special attention given to screening this use from the adjacent neighbors. The physical development is focused towards the interior of the site. Additionally, the northern portion of the lot, where the site slopes, is proposed to remain largely undeveloped as tree save and open space area.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.
   The development is not expected to injure the value of adjoining or abutting properties. The use proposed is similar to adjacent parcels (residential) although at a higher density. Given the proximity to the commercial / mixed-use Patton Avenue corridor, higher-density residential uses can be considered to be appropriate in this location. Additional (supplementary) landscaping proposed around the perimeter of the site will provide a visual buffer to mitigate impact to abutting lower-density uses.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.
   The proposed use as multi-family is in harmony with the area in which it is located. This site is along a transit route and within less than half a mile from the Patton Avenue

commercial corridor, making it an appropriate location for higher-density residential development. Additionally, there are a number of other parcels in the vicinity with multiple residential units, including condo units on adjacent Nancy Street and Townview Drive. None of these other developments include buildings as large as the three apartment structures proposed in this development; however, the buildings are sited in the center of a 6.5 acre parcel and supplementary landscaping has been integrated into the design as a perimeter buffer and should mitigate any potential visual disharmony. The number of units proposed exceeds the underlying (existing) density; however, staff feels that the site layout and proximity to Patton Avenue and transit (as mentioned above) makes this an appropriate location for this proposal.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.
The *Asheville City Development Plan 2025* encourages a Smart Growth development pattern by recognizing the need for higher density residential infill projects (pg. 31) located along transit lines (Asheville Transit Route 16). With 92 units, this project is not only meeting that goal but also seeks to assist with what the *Plan* calls "the number one economic development problem for this community" (pg. 45): lack of affordable housing. The project includes 10% of the units as affordable.

   City Council's goal of *sustainability* is supported by these projects that encourage high-density growth in an area with existing infrastructure as well as ideally located along a transit route. The development proposes for 10% of the units as affordable and for all 92 rental units to meet the North Carolina Healthy Built Homes program and Energy Star rated, aligning with Council's priority areas on providing *affordable* and *sustainable* housing opportunities for citizens.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.
This proposed development is located near major road facilities (Patton Avenue and major highways) and along a City bus route (#16). In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.
The proposed project has been reviewed by the City Traffic Engineer and it should not cause undue traffic congestion along the existing street infrastructure. The anticipated traffic at full build-out conditions is expected to be less than one hundred (100) vehicles per hour during the morning and afternoon peak hours during a typical weekday.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:
- The project offers 10% affordable housing units, aligning with City Council's goals.
- Higher density development furthers the goals and objectives of the comprehensive plan.
- The proposed development provides housing in a transit-served area.
- Supplementary landscaping provides a visual buffer from adjacent uses.
- The project will be designed to qualify for Healthy Built Homes and Energy Star certification.

Cons:
- The project exceeds the density allowance under the current RM-8 zoning district unless the Conditional Zoning is approved.
- Opposition has been stated from surrounding neighbors regarding increased traffic and scale.

Staff recommended approval of this project to the Asheville Planning and Zoning Commission. At their meeting on January 4, 2012, the Commission voted 6-0 to recommend the revised (reduction in units and scale) development proposal to the Asheville City Council.

Mayor Bellamy opened the public hearing at 5:48 p.m.

Mr. Bob Grasso, one of the partners in the development, said that he originally received approval for a duplex development (42 2-story duplex townhouses) but because of the economy conditions he met with staff requesting in their request for a conditional zoning for an apartment complex. After trying to address concerns by the Planning & Zoning Commission and adjacent property owners, they have reduced the scale and size of the project to be more in keeping with the surrounding neighborhood and conducted a Traffic Impact Analysis (TIA). He showed how the buildings are set into the interior of the property. The closest point is 45 feet from the property line. He said the distance from the Building B to the townhouse is 142 feet. The distance from the townhouse to the dumpster area is 118 feet. They tried to meet or exceed all the Unified Development Ordinance standards and all of the goals of the 2025 Plan by infill development, close to downtown core, on a transit corridor, etc.

The following individuals spoke in opposition to the conditional use rezoning for various reasons, some being, but are not limited to: 24 adjoining property owners signed a petition opposed to the rezoning; existing area roads are not equipped to handle increased traffic; bottleneck traffic light at intersection of N. Louisiana Avenue and Hazel Mill Road; project is not in scale with the rest of the neighborhood; no other buildings in the area exceed 2 stories; property owners of other vacant parcels in the area will request conditional use rezoning for higher density; developer bought the property as RM-8 and should build the number of units allowed under that zoning designation; rezoning is not what is best for the community; the development is out of character with the rest of the neighborhood; the development will decrease property values; can the petition submitted be considered a valid protest petition; the width of Hazel Mill Road is too small and can't handle two buses passing; have requested traffic calming on Hazel Mill Road in the past; provided petition with 38 names of area residents opposed to the project to the Planning & Zoning Commission; and concern that the property owner does not plan to build on the property, but to sell the property with pre-approval:

Mr. Jay Marlow, realtor and appraiser
Mr. Mike Newman, adjoining property owner on Nancy Street (submitted copy of a petition from 24 adjoining property owners opposing rezoning)
Brother Christopher Chiaronmonte
Mr. Steve Rasmussen
Mr. Nathan Merchant, resident on Hazel Mill Road
Ms. Valerie Martin, resident on Townview Drive

Mr. Mark Teague, Traffic Engineer with TM Teague Engineering, spoke about the Traffic Impact Analysis, noting that they did a worse-case scenario study, which noted that the road could handle the traffic, even if the dealership closes their access on Hawkins Lane. In addition, the study did not take into account any bus riders from the bus stop the developer is installing. Regarding the increased traffic from the development onto Hazel Mill Road, Mr. Teague said that the video shown by Mr. Marlow at the Planning & Zoning Commission meeting showed most of the afternoon congestion in the westbound direction at the intersection of Hazel Mill Road and N. Louisiana Avenue. He felt that most likely, the people coming home to the complex will be going in the opposite way of the video, and will not contribute to the westbound movement. Others would be turning into the development before they reach the intersection of Hazel Mill Road and North Louisiana Avenue. He also noted that revised site plan actually decreased the impervious surface.

Mayor Bellamy closed the public hearing at 6:10 p.m.

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In response to questions raised, City Attorney Oast said that (1) the petition submitted by Mr. Newman did not qualify as a valid protest petition; and (2) even if the project is sold, the property can only be developed in accordance with the approved site plan and that approval follows the land.

In response to Councilman Bothwell, Ms. Fields said that the development does not qualify for development incentives as the entire site must be within 1/8 mile of a transit line.

In response to Councilman Smith, Ms. Fields, after consulting with the City's Traffic Engineer, said that there are no plans for widening Hazel Mill Road.

In response to Councilman Hunt, Mr. Jeff Moore, the City's Traffic Engineer, said that he reviewed the Traffic Impact Study and also did his own traffic generation study, which is a nationally recognized methodology. For the AM peak hour (7-9 am), the site should generate 49 trips. For the PM peak hour (4-6 pm), the site should generate 68 trips. He looked at the TIA for the efficiency of the signal at Hazel Mill Road and N. Louisiana Avenue because that is really where the traffic crunch will be. According to that TIA, the level of service will still be a Level B, which is acceptable. Level E is the capacity of the signal. The signal should be operating below capacity. It is projected that the number of cars waiting to go through that intersection signal should not exceed approximately 11 vehicles during the PM peak. He agreed with Mr. Teague in that most traffic will be coming in the eastbound direction from Patton Avenue. Other traffic going westbound will go into the development before they reach the intersection.

In response to Councilman Pelly, Mr. Grasso said that he and his partners are the owners of the property. The current RM-8 zoning would allow 56.6 units on the site, however, the duplex market is gone and there is a need for apartments in the City. If the conditional rezoning is not approved by Council, he has no back-up plan. Regarding rental rates, Mr. Grasso said that they are having a pro forma done now and was unable to state possible rental rates, however, they would be in line with the current rental rates.

Councilman Bothwell and Councilman Pelly both agreed that this project has many good qualities; however, they were uncomfortable in changing the zoning when the surrounding property owners bought their homes with the existing zoning.

Councilman Hunt said due to the severe lack of rental and affordable housing, the project being close (but not close enough) for a density bonus, the project meeting smart growth principles, and the wish not to push development out to rural areas, he made a motion to approve the conditional zoning request for the property to be rezoned from RM-8 to RM-16/Conditional Zoning. This motion was seconded by Councilman Smith.

Councilman Smith understood the neighbors concerns; however, Council has made a commitment to smart growth principles and this project meets those principles.

Councilman Davis felt Mr. Grasso is a good developer and conscious of his surroundings; however, he felt the traffic on Hazel Mill Road is a concern along with the project being out of scale with the surrounding neighborhood. He could not support the motion.

City Attorney Oast reminded the Council not to make any decisions on the basis of who you think may develop the property because the property could be sold tomorrow or next year.

When Mayor Bellamy questioned if the motion included the additional landscape buffering, City Attorney Oast said that when he prepares the ordinance, he includes a list of written conditions and among those conditions is that the project be developed in accordance with the approved site plan.

Mayor Bellamy said that she travels Hazel Mill Road and the right-in and right-out from the project may help with traffic, but the project does not fit in with the surrounding neighborhood which are mainly single-family homes. She agreed we need more affordable housing, but we also need neighbors who want it, and in this case, there is no neighborhood support.

Mr. Grasso withdrew his application and said that he would see if they can reduce the number of units even more. He did note that they are trying to keep the units as affordable as possible but reducing the number of units may require rents to go up.

Vice-Mayor Manheimer was conflicted about this project as it does meet our strategic goals and recalled that we compromised with our density credit and reduced it from ¼ of a mile to 1/8 of a mile from a major corridor. Had the policy been ¼ mile from the City, this project would have fallen into that area. She understands not wanting to change the zoning for the neighbors, but was disappointed to see the effect of the limits of our policy. She felt we may need to revisit our density policy.

Upon inquiry of Councilman Hunt, City Attorney Oast said that initial rental rates can be included as a condition on the conditional zoning.

Councilman Hunt said that if the project comes back, he would be interested in understanding more about the rental rates. Vice-Mayor Manheimer responded that in some cases when the developer is trying to put together a financing package, their financing package is contingent upon rezoning.

Mayor Bellamy said that when we rezoned Appledoorn and Shiloh the City committed to traffic calming, and we did have some neighborhood buy-in. She felt the City needs to come up to the table with some of the things that make these projects work. If we are going to look at our policies, then we need to look at some case studies and see what worked and why. She felt it would be good for us to review our parking requirements, since we are pushing other forms of transportation, such as bicycles and transit.

It was the consensus of Council to hold a worksession to look at issues related to density bonuses, parking requirements, etc.

~~ORDINANCE BOOK NO. 27 – PAGE~~

**B. PUBLIC HEARING TO CONSIDER REZONING 12 SCHENCK PARKWAY FROM CENTRAL BUSINESS DISTRICT TO HIGHWAY BUSINESS DISTRICT**

**ORDINANCE NO. 4050 - ORDINANCE REZONING 12 SCHENCK PARKWAY FROM CENTRAL BUSINESS DISTRICT TO HIGHWAY BUSINESS DISTRICT**

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone 12 Schenck Parkway from Central Business District to Highway Business District. This public hearing was advertised on January 13 and 20, 2012.

Mr. Esselstyn said that the subject properties are prominently located at the first part of Schenck Parkway (the entrance to Biltmore Park Town Square), and they flank the first developed site one encounters on the north side of Long Shoals Road when heading east from the I-26 interchange. The relevant history of construction and zoning around the site goes back more than ten years.

The flanked area was developed with a gas station, convenience store, and restaurant in 2000. At that time, the operator of these businesses owned a leasehold for the site of this development, but the land was owned by Biltmore Commercial Properties, LLC. None of the site

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was then in the City of Asheville's zoning jurisdiction; a portion was in the Buncombe County Limestone Township zoning area—zoned Commercial Services, and a part was not zoned.

In 2001, the City of Asheville expanded its ETJ, and the unzoned portion of the land came into the City's zoning jurisdiction. CBD zoning was applied to the area west of Schenck Parkway as this classification most closely fit the urban design of the Biltmore Park Town Center area already in progress under the County's jurisdiction. (The City's Urban Village zoning district did not yet exist.)

In February 2006, the Master Plan and related zoning change (to Urban Village) for the Biltmore Park Town Square west of Schenck Parkway was approved. The subject properties were not included, as the plans did not effect any changes thereon.

In 2007, the subject properties were part of an annexation by the City of Asheville. The annexation became effective in late 2007, and discussions ensued about assigning a zoning district for the portion of the site which had been in the Buncombe County zoning area. City staff proposed zoning the entire 10+ acre area, including all of the subject site, to Highway Business, to be consistent with the other three corners at the intersection. The landowner (Biltmore Commercial Properties, LLC), however, preferred to maintain the pre-existing CBD zoning, as it provided more options (e.g. building height, residential density) for a future extension of higher impact uses consistent with the nearby urban village, without having to submit a master plan. The CBD zoning became effective for the bulk of the site in early 2009. A "clean-up" annexation and zoning subsequently applied the CBD zoning to a sliver that had been outside the city's jurisdiction.

In late 2010, the adjacent site developed with the gas station, convenience store and restaurant was sold to another party. In spring of 2011, the new owner requested rezoning to Highway Business, so that his businesses and site design would no longer be non-conforming with the zoning district. (CBD zoning not only doesn't ordinarily allow retail gasoline sales, but has building design and setback requirements not met by the existing development.)

As is mentioned above, staff feels that Highway Business would be the most appropriate zoning for the subject area, now mostly wrapped around the back of other properties zoned Highway Business. The current placement of a district promoting urban, multi-story, high-density, pedestrian friendly design tucked behind an area (at the corner of a major intersection) with a suburban corridor zoning district and developed with suburban, single-story automobile-oriented businesses presents a problematic situation in need of a remedy.

The stream area at the rear of the site serves as a pre-existing and protected buffer between the area proposed for rezoning to Highway Business and the Urban Village to the north. The heavily vegetated stream area is under a conservation easement, so future development would be limited to the "pads" at the same horizontal level as the development on the corner.

The zoning of the 0.03-acre parcel (reserved for signage) is in fact fairly inconsequential, since the standards for that signage are dictated by the larger Biltmore Park sign package approved by City Council. However, it is good practice to make the zoning of such a parcel consistent with abutting zoning, and to eliminate the existing tiny zoning district.

When the gas station parcels were being considered for rezoning earlier this year, staff's only significant reservation was that these two parcels would remain zoned, awkwardly, CBD. This petition has the potential to resolve that concern, and create a more orderly situation in the area.

At their January 4 meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning.

Prior to the Planning and Zoning Commission meeting, staff received communication from Biltmore Park property owners expressing concern about traffic issues near the entrance to the site off Schenck Parkway. Planning staff has relayed this concern to the transportation department, while noting that the proposed zoning would be a shift from one high-impact commercial zoning district to another (a multi-story hotel could be built on the site under the current zoning, for example), and should not be viewed as necessarily increasing traffic potential over the existing situation. Staff has received no other communication from the public regarding this petition.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- HB zoning is highly compatible with the surrounding development and road system.
- Would supplant zoning which is both less appropriate for the site and awkwardly configured.

Con: None noted.

Staff feels that the proposed rezoning would unquestionably be an improvement over the existing situation for the subject properties, and recommends approval of the request.

Mayor Bellamy opened the public hearing at 6:45 p.m. and when no one wished to speak, she closed it at 6:45 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Bothwell moved for the adoption of Ordinance No. 4050. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 265**

**C. PUBLIC HEARING TO CONSIDER REZONING 2 GERBER ROAD FROM URBAN VILLAGE DISTRICT TO COMMUNITY BUSINESS II DISTRICT**

**ORDINANCE NO. 4051 - ORDINANCE REZONING 2 GERBER ROAD FROM URBAN VILLAGE DISTRICT TO COMMUNITY BUSINESS II DISTRICT**

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone 2 Gerber Road from Urban Village District to Community II Business District. This public hearing was advertised on January 13 and 20, 2012.

Mr. Glines said that in 2000 and 2001 a new zoning district called Urban Village was created in response to broad community interest in allowing more sustainable mixed-use developments that provided a sense of place similar to successful areas in the city such as downtown and Biltmore Village. In response to this interest, the Urban Village District was adopted by City Council in 2001 and the former Gerber Plant site was one of the first to use it. The property was rezoned and a schematic master plan was approved. This was generally accepted to be an improvement over an earlier failed Walmart that had been proposed at the same site.

Despite the initial enthusiasm for the zoning option, only the front portion of the urban village (which had been portrayed as *'phase one'* of the entire development) was completed and the remainder of the site across Gerber Road (totaling about two acres) and the large area east

of the internal road known as Fall Pippin Lane remained vacant. Later when the economy began to slow down and economic growth faltered, the developers fell behind with the mortgage and the entire site was foreclosed on by JP Morgan Chase Bank. Recently that bank sold the front commercial area of the site (*phase one*) to private owners who do not own or intend to develop the rear portion of the urban village area.

Over the past few years as the situation with the foreclosure process became clearer, staff has spoken with a number of potential developers who were interested in the undeveloped portion of the site. Through these informal conversations it has become apparent that the preferred form of development for the remaining undeveloped area will likely not be in accord with the original master plan or Urban Village standards and the staff anticipates that eventually a rezoning request will be presented for this property for a more traditional multi-family residential project.

Rezoning to Community Business II (CB II) is only proposed for the 7 acre portion of the existing Urban Village site that contains a shopping center, office space and some upper floor residences. The shopping center has a number of retail and restaurant uses with well articulated buildings and a series of parking areas along the internal street with smaller parking areas surrounded by buildings. At least one of eight residential units is occupied. The new owners of the site have requested this zoning change to be better aligned with their long term management plans, the actual use and activity on the site and for rebalancing parking needs. As a stand-alone site the development meets the letter but does not fully meet the intent of the Urban Village ordinance because it is almost exclusively commercial in nature and contains minimal residential units. The goal of the Urban Village District is to encourage a true mix of uses throughout a single site. The 'phase-one' site has a good network of sidewalks and ample landscaping for streets and parking areas that meet and in places exceed UDO standards but are in keeping with the original direction of the development. Street access to the site is from both Hendersonville Road and Gerber Road. One of these locations is expected to provide future access to the vacant upper area when it is developed.

The upper site (which totals about 17 acres including 2 acres that are across Gerber Road from the primary parcel) remains under separate ownership and is not proposed for a zoning change at this time. It will remain under the Urban Village zoning designation and under separate ownership. The schematic master plan for this portion included locations for buildings and streets and was approved with a mix of residential units and limited commercial development. It takes access from Gerber Road and can stand alone without the section fronting on Hendersonville Road.

The proposed CB II zone is intended to provide areas for medium to high density commercial uses serving several residential neighborhoods. The district requires parking to be placed to the side or rear of the building which is a pedestrian oriented building standard in place to encourage pedestrian access and movement through the district. The location for CB II zoned areas is appropriately located on major thoroughfare streets to ensure adequate access. The list of allowed uses is quite extensive since a district goal is to encourage intensive commercial uses meeting the needs of the wider community. Individual buildings cannot exceed 45,000 square feet.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable because the proposed zoning is compatible with the surrounding area and with the development already on the site.

Pros:

- The proposed rezoning is responsive to changing market conditions and economic realities
- The proposed zoning will be compatible with the surrounding area and the existing development on the parcel

- The site can be maintained and improved to preserve its economic viability

Con:

- Reduces the likelihood for high density mixed-use development (Urban Village-style development) on this or adjacent properties.

The Planning and Zoning Commission at their meeting on January 4, 2012, voted 7-0 to recommend approval of the zoning change. Their discussion focused on the intent of the Urban Village District zoning, the applicability of the CB II proposal and the portion of Gerber Village to remain Urban Village zone. Staff supports the request to rezone the property to CB II because the surrounding area and the existing development on the site supports this zoning pattern.

Mayor Bellamy opened the public hearing at 6:53 p.m.

Mr. Matt Sprouse, representing the owners, said that this zoning change will give the owners of the property greater flexibility. They will not change the buildings, but there are some site issues when it comes to parking and leasing spaces. They are focused in getting businesses back in the shopping center.

Mayor Bellamy closed the public hearing at 6:55 p.m.

Mayor Bellamy noted that the City doesn't maintain the streets inside the Urban Village.

City Attorney Oast cautioned the Council that if the property is rezoned, it can be used for any use allowed in that district.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No. 4051. This motion was seconded by Councilman Hunt and carried unanimously.

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**Closed Session**

At 6:57 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: J. Jerome Jensen, et al (Biltmore Lake Annexation); Holly P. Oxner, Jr., et al. vs. City of Asheville et al. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11 (a) (3); (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authorization is contained in N.C.G.S. 143-318.11 (a) (4); and (3); and To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11 (a) (1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 7:20 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

## V. UNFINISHED BUSINESS:

### A. REGULATING THE USE OF CITY PROPERTY

**ORDINANCE REGULATING CERTAIN USES ON CITY PROPERTY**

**RESOLUTION DESIGNATING PACK SQUARE AND CITY-COUNTY PLAZA AS CITY PARKS, AND DESIGNATING CERTAIN AREAS FOR CAMPING AND PUBLIC FORUM PURPOSES**

**ORDINANCE AMENDING THE FEES & CHARGES MANUAL CREATING A PERMIT FEE FOR CAMPING ASSOCIATED WITH FREE SPEECH**

Building Safety Director Robert Griffin said that the purpose of this report is to consider 1) a camping process in the area adjacent to City Hall that is not within the Pack Square Park boundaries; and 2) associated ordinances necessary to establish the process.

City Council has reviewed the free speech activity associated with Occupy Asheville and referred three ordinances proposed by staff addressing the activity to the Public Safety Committee. The Public Safety Committee did not recommend the proposed ordinances. However, the Public Safety Committee did recommended establishing a permitting process for camping associated with free speech activities in an area adjacent to the City Building and the necessary ordinances to achieve the permitting process.

The Public Safety Committee recommendations and staff response were:

Achieve/sustain a few goals:
- Zero violence
- Protection of free speech and civil liberties
- Minimize risk of legal liability
- Ensure that public space is available to all
- Minimize cost to taxpayers
- Maintain strategic priorities in regards to 10 Year Plan to End Chronic Homelessness & Public Safety

| Can this type of use be permitted? | Yes, at the Development Service Center |
|---|---|
| Permitted activity is for purposes of "speech"; Register individual campers | DSC staff can perform this function. This will require an Ordinance. |
| Maintain cleanliness standards (garbage removal, store items in tents) | Public Works will pick up closed trash bags if placed on Marjorie Street by 3:00 AM. This will require an Ordinance for the storage of personal belongings. |
| Move tents with regularity (every 48 hours?) to maintain grounds | Currently, no open space exists. Parks believes the area will need to be reseeded or new turf installed when no longer in use. |
| True cost pricing for camping permits – by the person, not the tent. | The estimate for taking the application, generating the permit, generating the tag to be attached to the tent, keeping a spreadsheet of names, direct and indirect costs is $18.00 for 30 minutes using clerical staff and not a permit facilitator. This will require an Ordinance change to the Fees and Charges. |
| One tent or less per person, with storage allowed only inside tents. | More than one person can be associated with one tent, but one person may not be associated with more than one tent. |

| No open fires/flame | Yes, written on permit |
|---|---|
| Reapply every 7 days | Staff recommends every 14 days. Federal forest uses a maximum of 14 days for "camping". The Building Code requires a 40-foot buffer around the City Building. |
| Port-a-johns permitted using standards for other outdoor event permits. Port-a-johns available to the public. Port-a-johns not subsidized by city taxpayers | Staff has indentified 6 locations where port-a-johns are utilized by other events, where the surface slope is low to allow use, where the provider can maintain without driving on Park property, and where placement would cause minimal disruption to scheduled events. Note that if one of the locations where tents are now located are selected this will impact tents currently in this location. |
| Permitted only in specific area(s)<br>- utilize current property only<br>- add other properties as appropriate<br>- does not include parks pending further review by Parks Board & Parks, Rec, Cultural Arts Dept. | Only area that is not part of the Park or restricted by the Building Code for life safety and egress is the slope below the metal steps where one tent is currently located. |
| Consequences of violation could be:<br>- - rescinding permit for individuals in violation<br>- - fines (up to $25) for safety violations (fire, sanitation, other)<br>- - fines (up to $100 or eviction and referral to Homeless Service Provider) for camping without permit | - Rescinding permits is possible;<br>- Current Council approved fine structure within the Fire Code currently begin at $50.00 with opportunity for warnings. Recommend keeping existing fine structure. |
| Notify homeless service providers if violator requests it | To ensure a timely and accurate response, any city staff who encounters an Occupy Asheville camper requesting information on homeless resources should directly contact homeless outreach workers at the A-Hope Day Center (828.252.8883). The referring staff member should then e-mail the City of Asheville coordinator, Amy Sawyer, alerting her that a referral has been made (asawyer@ashevillenc.gov). |

Due to the 40-foot setback from the City Hall building, the area will be sectioned into eighteen 10-foot-by-10-foot spaces to determine the maximum number of permits that can be issued. If Council directs the area to expand into the area below the steps, that will add an additional four spaces. Each 14-day renewal period the number of spaces will be allocated to the first applicants in-line at the DSC. If Council direction includes the cost of port-a-johns in the cost of the permit, staff will add $3.30 per port-a-john to each permit, making the total cost for the permit with two port-a-johns $24.60 every fourteen days. An ordinance amending the Fees & Charges Manual is available for Council consideration.

Pros:

- The City develops a process for permitting camping associated with free speech.
- Creates a process for any person or group wanting to establish camping associated with free speech.

Cons:

- Establishes a camping area adjacent to Pack Square Park that is used for events, festivals, weddings, splash-Asheville, and others.
- May impact events and festivals that historically have used this area as part of their function.
- Creates a process for any person or group wanting to establish camping associated with free speech.

The fees for permitting are set to recover 100% of actual cost. If not all the allocated spaces are permitted and the cost of the port-a-johns are included a portion of the monthly port-a-john cost will be absorbed by the City.

City Attorney Oast said that this will supplement information provided to Council by Mr. Griffin and in other staff reports and memoranda previously provided to Council.

Pursuant to Council direction at the January 10 Council meeting, on recommendation of the Public Safety Committee from its special meeting on January 3, an ordinance and resolution have been prepared to effectuate the following:

1. Provide for designated areas on City property within or near public forum areas, where overnight camping may occur, subject to certain regulations.

2. Clarify that camping is not otherwise permitted on City property.

3. Clarify that tents or shelters are not permitted on City property, except when used for camping.

4. Provide that equipment or personal belongings may not be left unattended or stored on City property.

5. Designate Pack Square and City-County Plaza as park property, and designate certain areas within the park as public forums.

The three ordinances presented to Council on December 13, 2011, have been collapsed into one, and rearranged so as to be more internally integrated, and are presented as a new and separate article within Chapter 12 of the City Code. Chapter 12 is entitled, "Parks, Recreation, and Public Places," so this is an appropriate placement.

The ordinance provisions contain general prohibitions on certain activities on City property, primarily camping and related activities. These activities have historically not been permitted on City property, but there was no ordinance that clearly addressed them.

Sec. 12-50 of the draft ordinance now contains some definitions of terms used throughout the article.

- The definition of "camping" has been revised to bring it closer to the regulations that were upheld by the U.S. Supreme Court in its 1984 opinion in the Clark v. Community for Creative Nonviolence case, and the more recent U.S. District Court decision involving "Occupy Columbia," and its activities on the South Carolina State House grounds.

- The definitions of "tent" or "shelter" have been revised to incorporate language from the North Carolina State Building Code.

Section 12-51 sets out the general prohibition of camping on City property, but notes that camping is allowed pursuant to another section of the article.

Section 12-52 sets out the general prohibition of tents or other shelters on City property, but contains certain limited exceptions for activities that commonly occur in parks (pop-up tents and umbrellas), as well as permitted camping.

Section 12-53 sets out the general prohibition of storage of gear or equipment on City property, with an exception for bicycles and other forms of personal transportation.

Section 12-54 contains the regulations for permitted camping, and is based on regulations suggested by the Building Safety Department, in response to direction from the Public Safety Committee. Camping is permitted in designated campsites whether or not in connection with First Amendment activities. The regulations have been drafted so as to ensure regular turnover of space within the campsite, and to limit use of the campsite by any one permittee.

The ordinance recognizes that the campsites may not be available if other activities are programmed for the area, or because of demonstrable sanitary or public safety concerns.

Violations of the ordinances are punishable as civil or criminal offenses, and the ordinance contains a provision for revocation of camping permits in appropriate situations.

The resolution designates all of the reconfigured Pack Square and City-County Plaza area as a City park. He used a map to illustrate the areas. The resolution also designates two areas within the park - - the western extremity of the Vance Monument oval and the area in front of the City Building - - as public forums. This designation recognizes custom and practice that have developed over time.

The resolution also designates an area to be set aside for camping. Neither the designated public forum nor the designated campsite are subject to the closing time otherwise applicable to City parks.

This ordinance and resolution in combination allow for First Amendment activity to occur within designated public forum areas on a round-the-clock basis, and allow for camping to occur on round-the-clock basis, but pursuant to certain regulations. As indicated in the Staff Report, City staff are prepared to administer the camping regulations through the Development Services Center. Staff will monitor the administration of these ordinances, and suggest revisions as the need arises.

The proposed ordinance and resolution are intended to facilitate the use of public forum space on round-the-clock basis, and to allow for overnight camping in connection with that use. The regulations are content-neutral in that they do not require or permit City officials to evaluate the legitimacy of any claim that overnight camping is an essential element of a particular First Amendment activity. The regulations support the governmental interest of maintaining parks and City property on an equal basis for use by all citizens, and are drafted so as to be the least intrusive means of supporting that interest. The regulations do not provide for unlimited use of City property, but they leave open ample alternative means of expression, excluding expressive conduct such as overnight camping.

The proposed ordinance and resolution have been drafted to address concerns raised by Council and the public over the last several weeks, but may be further adjusted prior to adoption. As with any ordinance of this nature, it may be fairly anticipated that questions as to interpretation and field application will arise. Litigation over these issues including, enforcement, is a possibility. Council may wish to consider a delay in the effective date to enable the permitting system to be set-up, and to allow campers and users of the public forum areas to make appropriate arrangements for their activities.

Pros:

- Implements Council direction based on recommendation from Public Safety Committee.
- Formal clarification of park boundary, and public forum areas.

Cons:

- Requires additional staff time/resources to monitor activity.
- Potential for damage to property from overuse.

If Council wishes to allow permitted camping in the designated areas, adoption of the ordinance is recommended. Regardless of any action on the ordinance, it is recommended that the resolution designating park property, and designating public forum areas within it, be adopted.

Councilman Bothwell said that Sec. 12-52 regarding no storage on City property is prohibiting City employees leaving their personal belongings in their offices in City Hall over the weekend. City Attorney Oast responded that there is a significant difference between someone's office and park property. He would be happy to clarify that section to apply to City property exclusive of interior buildings; however, the definition of "City property" in the ordinance does not refer to the interior of buildings.

In response to Councilman Bothwell, City Attorney Oast said that the definition of "City property" is internal to this ordinance.

Regarding Councilman Hunt's question regarding the number of port-a-johns, Mr. Griffin said that under the Building Code, under which we use to determine the number of port-a-johns that may be necessary at festivals and events, would only require one unisex port-a-john.

In response to Councilman Bothwell, Mr. Griffin explained that if two people were in one tent, only one would need to pay the port-a-john fee.

Councilman Hunt said this has been an interesting and challenging issue for him. At the end of the day the right to public speech is important to preserve and protect. The unique thing about the Occupy movement is the 24/7 presence with the existence of tents being part of the speech. Therefore, he moved to adopt the ordinance regulating certain uses of City property. It is his own personal view, as someone who believes in the principles that Occupy stands for, he is concerned that this particular encampment and the way it has evolved with the focus on tension with the City over whether or not to camp may not be as advanced as well as the movement might hope. If this ordinance is adopted and there is a way the encampment can continue in an orderly way, it is his hope that the people who participate are truly about speech and expression.

Councilman Smith asked for a friendly amendment to Section 12-54 (e) regarding no person may be issued more than four permits in any one year period. He felt that rather than limit the permits to four, it seems the intent is to make sure the people who are using the space are doing so for purposes of speech. So, in order to prevent abuse of the intent, while not prohibiting the activity, he asked for a friendly amendment for a two-on and one-off permit process. Rather than limiting the permits to four a year, one could renew the permit, but then you would have to take one 14 day period off before applying for another one. This could serve the purpose of not limiting the associated activity of the speech, but at the same time no one is abusing the intent of the ordinance.

Councilman Hunt accepted Councilman Smith's friendly amendment, with staff's input on how that might fit into the ordinance before a final vote. As a result, Councilman Smith seconded the amended motion.

Mayor Bellamy opened up public comment and advised the public that comments would be taken on all three actions before Council (1) Ordinance regulating certain uses of City

property; (2) Resolution designating Pack Square and City-County Plaza as City Parks, and designating areas for camping and public forum purposes; and (3) Ordinance amending the Fees & Charges Manual creating a permit fee for camping associated with free speech.

Twenty individuals spoke in opposition of the three actions before Council.

Mr. Fred English supported adoption of the three actions before Council and felt it was time for Occupy Asheville to leave from their campsite in front of City Hall.

In response to questions raised:

- Regarding potable water, Mr. Griffin said that staff did not use the standards for campgrounds since this is not a campground where motor vehicles and other types of appliances are met. Once the pavilion out front is completed in approximately two month, there will be potable water.

- Regarding the expansion of the Park property, City Attorney Oast said that the area beside City Hall has been traditionally a part of the City Park. It is not programmed as a park because of various building safety concerns.

- Regarding the definition of "camping", City Attorney Oast said the definition was drawn from the ordinances and regulations upheld in the Clark vs. Community for Creative Nonviolence case in 1984. That definition was pretty much the same definition that was in the case involving the South Carolina State House grounds in Columbia, South Carolina. He did do some modification to try to address Asheville's particular situation.

- Mayor Bellamy said she supported the concept of looking at how more people in our community can have more wealth.

- Mayor Bellamy did not support Citizens United.

- Regarding tents, City Attorney Oast said that the most difficulty he had in crafting the ordinance was trying to define camping and distinguishing that from sleeping. Among the things our proposed ordinance provides is that except as permitted in Sec. 12-54, or other City ordinance (which he believes includes Sec. 11-16 which prohibits sleeping on public property in such a manner as to interfere with pedestrian and vehicular traffic or permitted activities), this would not prohibit sleeping on the sidewalk. To illustrate, you could sleep on the sidewalk as long as you did not block pedestrian passage, but to the extent, it would prohibit the erection of tents or other shelters on the sidewalks.

When Vice-Mayor Manheimer asked if there are any other North Carolina cities that have designated campsite areas, Assistant City Manager Richardson said that there are none in North Carolina; however, there are several cities across the United States that have tied the protest movement to a 24/7 presence with camping.

Vice-Mayor Manheimer clarified that the three proposals before Council now would allow a campsite in front of City Hall where you can get a two week long permit to camp. City Attorney Oast agreed and said that if we clarify that the Park boundaries to include the area in front of City Hall, that entire area is subject to the 10:00 p.m. closing time. He felt that area in front of City Hall is part of the property that was deeded to the City by Mr. Pack years ago.

Mayor Bellamy could not support the three actions before Council. She does not support camping nor does she support charging people to camp. She doesn't object to picketing 24/7, but doesn't think the tents should be there. She felt we are sending a dual message – Occupy can have tents/camp and homeless people cannot. We have allowed no camping in the City of Asheville for years for the homeless. In fact, we have removed homeless camps from other parts

of the City. She also did not support designating free speech zones, as all of Asheville is a free speech zone. She felt we need to deal with the real issue of tents/camping.

Councilman Davis could not support the motion. He read the following e-mail from Mr. Tom Israel which he felt a lot of people in Asheville feel right now: "I was prepared to speak at the City Council meeting two weeks ago to address the proposed ordinances addressing camping on city property. Unfortunately I will be out of town and won't be able to attend this evenings City Council meeting. I would be grateful for your time to review my comments. My family has a significant interest in this issue as owners of Pack's Tavern, contributors to the Park, and as third and fourth generation natives of Asheville. In my opinion this isn't an issue about first amendment rights and it's not about the homeless, it's about camping. It's about camping on city property in or adjacent to a public park. And not any public park, a beautiful new park that took years and millions of dollars from private contributions to create. Allowing camping in or adjacent to probably the most important section of the park with Splashville and the amphitheater is unacceptable for several reasons. This would be a campsite without the facilities required by a campsite, potable water and restroom facilities. Please do not put port-a-johns in our park just outside our City Building and right next to Pack's Tavern's outside seating. It has already become a public safety issue demanding the time and effort of our police force. It is already a sanitary issue. It is already an eyesore, resembling a shanty town in our park and adjacent to the City building. Quiet enjoyment is no longer available in this section of our new park. Campsites require potable water and restroom facilities, so where will they get them? The campers have already come into the alley of Pack's Tavern at night and taken water from the outside faucets. Strangers in that alley at night are not what the staff needs to be subject to. They have come in through an exit and used the restrooms at Pack's quickly leaving before they are noticed. They have constructed a compost on Pack's property for Pack's guests to admire. But soon we will have our new pavilion that will provide restroom facilities for park visitors. Or will it become the facilities for the campers? How will the children and the parents of children feel about campers, and the campers going back and forth to the pavilion? Will the parents bring their children to play Frisbee and will they let their children play In Splashville with campers coming and going in and out of their tents? You want to make it a permitted use, who will not be given a permit? How will we know that the campers and the campsite are safe? It already makes city employees, park users, and Pack's Tavern guests uncomfortable. The general public does not feel safe with campers here. For very significant reasons camping is not allowed on city property, or ordinances tell us this. We can protest all we want to, no one is stopping that, but we cannot camp here. Because then anyone can camp here and then it becomes a public safety issue, a sanitary issue, and a quite enjoyment issue. I respectfully request that you approve the three ordinances confirming that these uses are not allowed on city property." He agreed with Mr. Israel. The reality is that the area is a beautiful park that should be respected. There was consideration about camping in the City before the Occupy movement began.

Vice-Mayor Manheimer's main concern is that we are designating a campsite next to City Hall.

Councilman Smith, member of the Public Safety Committee, said that this has been an emerging situation. First Occupy was under the Lexington Avenue Bridge, then in the middle of the Park by Vance Monument, then staff identified the area in front of City Hall as an undesignated place that falls in a gray area that until Council provides further direction, they can camp there. It was embraced by the Occupy movement. An alternative presented at the Public Safety Committee meeting was to move it to other parks; however, this siting was an acknowledgement of where this protest was taking place. He is well aware of a lot of the difficulties experienced in the campsite – a number of Occupiers saying they need to discontinue the camp, violence, complaints about people who are there only to take advantage of a camp, and other issues. He explained that a lot of the permitting process was intended to respond to the needs of Occupy campers as they were stated to him and others. The idea that any of Council is against free speech is absurd. This is seven people trying to respond to an emerging situation and be sensitive not only to what he has heard and seen from Occupy, but also

recognizing some of the other issues that other members of the City bring to this as well. He believed there is a lot of good faith effort being made by Council. This is not about the Occupy movement, but about an enduring public policy piece that we have to wrestle with. He felt this was the compromise position that was landed on in the effort to err on the side of constitutional and protected free speech while recognizing that camping costs money.

Councilman Bothwell said that he has been outspoken in support of the goals of Occupy. They reflect many basic tenants that he has held for a long time in terms of holding Wall Street accountable, ending corporate personhood, not equating money with speech, etc.. It's sad that Council, staff and those associated with the Occupy movement have spent hours on this dance around whether there should be tents on a spot of land. Those are not the real problems we are trying to address. We could have been spending the same amount of Council time talking about how to extend the living wage to more of our employees and contracts, or move moving more of the City's money into local banks instead of fretting about an issue that comes down to a question of sanitation. What we have out front can be described as a "Motley Crew" and he described the history of that term. He feels the tent have been that association. He hoped that Occupy would move on to something besides the question of can we place ourselves in a place where it's hard to live because it's taking away the energy from the things we really need to change. The work needs to be done to change this country and simply confronting City Council with hard decisions isn't moving anything anywhere. He was uncomfortable with the cost of the permit, but agreed with Councilman Smith that the permitting process was discussed to help weed out the people who weren't there for the Occupy purpose. And once a permitting process is set up, there has to be a cost because it does cost the City money. We don't always have 100% consensus on everything, and yet we do have people like the owner of Pack's Tavern whose business his family has put money into is being affected. There are effects beyond making a presence known. He felt it would be stronger as a movement to move on from that. He could not support the motion because of the cost associated with the free speech nor designating a permanent camping space in front of City Hall.

Councilman Hunt withdrew his motion.

Vice-Mayor Manheimer agreed with Councilman Bothwell that we do have some very pressing issues the City is trying to grapple with, i.e., water system, entering the budget cycle. She felt this has been on Council's agenda a number of times and felt we need to re-group as there are many struggles ahead of Council in other arenas as well.

Vice-Mayor Manheimer moved to recognize the Park as outlined in red on Exhibit "A" which is attached to the resolution before Council (which includes the area in front of City Hall being subject to the 10:00 p.m. closing time). This motion was seconded by Councilman Davis.

Ten individuals spoke against the motion recognizing the area in front of City Hall as a Park suggesting postponing the issue until a different compromise can be reached; but asked if the motion passes to allow Occupy Asheville time to disassemble.

Vice-Mayor Manheimer amended her motion to put an effective date of February 2, 2012. Councilman Davis moved to accept the amendment.

Councilman Hunt said a lot has been said about the engagement with the City of Asheville and Occupy and how that has become some of the focus of the Occupy effort here. He could not support the motion and felt that postponing this issue to the next Council meeting would ensure more thorough thought about this particular motion. He encouraged Occupy Asheville consider where their focus should be.

Councilman Smith appreciated suddenly people were interested about compromise once the compromise was off the table. He explained that the motion under consideration would ban

the campsite. He could not support the motion and felt there should be a third way to address the situation.

The amended motion made by Vice-Mayor Manheimer and seconded by Councilman Davis failed on a 3-4 vote, with Councilman Bothwell, Councilman Hunt, Councilman Pelly and Councilman Smith voting "no".

Councilman Hunt acknowledged there seems to be a limited number of options and felt the Occupy moving has an opportunity to help resolve this. He was not eager for staff to research another set of options, but suggested extending this item to the next Council meeting and all Council time to think through the motion made by Vice-Mayor Manheimer. What is important to him is the space and opportunity to protest. After hearing this discussion, he has become uncomfortable with the notion of a policy that simply allows camping. At that point we are inviting all kinds of people to camp, without it being qualified as speech. It is clear that our ability to come up with creative options is limited.

Mayor Bellamy noted that since there is no direction to staff, they will not have prepared anything for Council for their next meeting, which will be February 14 (3 weeks from now). Staff needs policy direction from Council. Staff needs the leadership from Council on this issue.

In trying to find another compromise, Councilman Smith said that a motion could be to allow free camping in front of City Hall for anyone. Vice-Mayor Manheimer noted that what is happening now. Councilman Pelly said that motion could be permitted for a limited amount of time.

Councilman Hunt suggested between now and the next Council meeting he would like to think hard about the motion made by Vice-Mayor Manheimer.

Vice-Mayor Manheimer said that Council hasn't discussed the designation of public forum areas. She understands that there are legal reasons why some areas are designated and some are not. City Attorney Oast responded that he included the areas in front of the City building and the western extremity of Vance Monument as public forums because he thinks that's how they have traditionally been used and he felt that was what the courts might recognize. Other cities have designated public forums in that way.

Vice-Mayor Manheimer clarified that the western extremity of the Vance Monument would be included in the Park and be subject to the 10:00 p.m. curfew hours; however, the space directly in front of City Hall is not included in the Park and not subject to the curfew hours. Those two areas could be designated as public forum areas and you could stay there 24/7. She felt that would be a compromise.

In response to Mayor Bellamy, City Attorney Oast said that it is possible to adjust the park closing hours and make that adjustment specific to this park.

Councilman Bothwell was going to bring this up at Council's retreat, but wondered if the majority of Council would be supportive to amend the US Constitution to decide that corporations are not people – that only natural people are people. If Council supported that, he wondered if Occupy Asheville might deem that a victory in achieving one of the things they are trying to bring to the attention of the City and de-camp. He felt that would be compromise.

Councilman Smith was going to submit that request to be brought before the full Council.

Councilman Hunt clarified that Councilman Bothwell's compromise would be the expansion of the Park to include the area by City Hall, including the designation of public forum areas by Vance Monument and directly in front of City Hall, along with the resolution abolishing corporate personhood.

Councilman Bothwell hoped Occupy Asheville would discuss his compromise and feel that they had started to advance the cause. The truth of the matter is the City of Asheville can do nothing to end corporate personhood outside of endorsing the idea. We can't do anything to change the money structure in this country. We are doing our best by having a living wage for our employees. We can't change the federal system or the influence of corporations on politics. The best we can do is when we individually run for office is not take corporate donations. It's possible for us to change our own behavior but as a City we don't have control over the major issues Occupy Asheville is seeking to address. The problem is not Asheville but Wall Street.

Councilman Pelly suggested a three-week permit to allow the installation of a port-a-john for that period of time.

Vice-Mayor Manheimer felt the compromise by Councilman Bothwell was excellent and the only thing that would be contingent upon is the wording of the resolution to abolish corporate personhood. She supported taking action at this meeting.

Councilman Bothwell moved to join the many other cities across this country who have endorsed the move to amend the US Constitution to exclude corporations from personhood and to create a condition where only natural human beings are considered people under our laws. This motion was seconded by Councilman Smith.

Councilman Smith said that there is a group called "Move to Amend" that came to him with a proposed resolution to eliminate corporate personhood. Councilman Hunt provided Council and the public with a copy of the proposed resolution entitled "Resolution to Support the Abolition of Corporate Personhood." Councilman Smith said that the resolution language is off the Move to Amend website and word-smithed by the Move to Amend group in Asheville.

Five individuals spoke as follows: one felt this was not a compromise, two felt the issue should be postponed with continued discussion, one felt the compromise was good, and one asked for time to allow the Occupy Asheville Coordinating Council discuss the compromise at their Monday meeting.

Councilman Smith withdrew his second as he just contacted the "Move to Amend" group and they wanted to have public notice of their resolution request to Council and have the opportunity to speak to Council on that issue.

Councilman Bothwell agreed that having the resolution go through the normal process is better and withdrew his motion. He suggested Occupy Asheville take this discussion back to the Coordinating Council and determine how they want to take their movement forward.

Councilman Pelly felt that in three weeks Council could revisit Vice-Mayor Manheimer's motion to add the existing campsite into the Park, but Occupy's fear is they would be subject to removal unless we voted on this tonight and effective in 3-weeks.

Vice-Mayor Manheimer moved to (1) recognize as a Park the area outlined in red on Exhibit "A" on the map entitled Pack Square Park (which includes the area by City Hall which is being used as a campsite); and (2) identify the area on the western extremity of Vance Monument and directly in front of City Hall outlined in green on Exhibit "A" on the map entitled Pack Square Park as the public forum areas effective February 14, 2012. This motion was seconded by Councilman Pelly.

Five individuals spoke against the motion asking for Council to give the Occupy Asheville Coordinating Council an opportunity to discuss the motion and work through their process, but in the meantime allow the placement of a port-a-john.

When Councilman Hunt questioned the effective date of February 14, Councilman Pelly said that if adopted, the motion would go into effect on the same night as the resolution to eliminate corporate personhood would be considered by Council.

Councilman Hunt supported the motion, along with the resolution to eliminate corporate personhood.

Councilman Davis read the resolution regarding corporate personhood and could support it.

Councilman Bothwell said that the motion does not allow time for a response from Occupy Asheville. He would support revisiting the motion on February 14. Councilman Hunt agreed with Councilman Bothwell and noted he was fundamentally supportive of the motion.

Councilman Pelly felt that as long as the resolution to eliminate corporate personhood is on the agenda on February 14, and it appears the resolution will pass, this is one way to break out of the impasse we seem to be in.

Brother Christopher Chiaronmonte raised a point of order that he was denied access to speak because public comment was limited to five people. Mayor Bellamy said that Section 7.5 of the Rules of Procedure for City Council states "The time limit applicable to public hearings or public comment periods on any agenda item shall be one hour. This time limit may be exclusive of staff presentations and any structured Council debate. This time limit may be shortened or extended by the Mayor with the concurrence of Council."

Prior to voting on the motion, Councilman Pelly withdrew his second. He would be willing to wait until February 14 to consider the motion, noting that he would be very much inclined to support the motion made by Vice-Mayor Manheimer.

Councilman Bothwell moved to permit Occupy Asheville to avail themselves of the port-a-john offered to them by the Western Labor Council and locate it on one of the locations identified by Robert Griffin, until Council's decision on February 14, 2012. This motion was seconded by Councilman Pelly.

Five individuals spoke thanked Council for the time extension until their Coordinating Council has an opportunity to meet on this issue.

When Councilman Smith suggested the port-a-john location be between the City Hall and County Courthouse, Mayor Bellamy said that staff has identified some locations.

Assistant City Manager Richardson said that staff has identified several locations for a port-a-john. The Parks & Recreation Director will work with the Building Safety Director on the appropriate location. If Council adopts the motion on the floor, from an operational standpoint, he that Council ask Occupy Asheville to make arrangements to meet with City staff tomorrow. In addition, if arrangements are not made, because the existing campsite is clearly saturated, he asked that the meeting be a condition of their continuing to remain on that site for the next three weeks.

When Mayor Bellamy asked for a spokesperson to meet with Mr. Griffin about a port-a-john, Kayvon Kazemini was chosen by those representing Occupy Asheville in the Council Chamber to be their spokesperson.

Mayor Bellamy said that after Occupy Asheville's meeting on Monday, she would expect Mr. Kazemini to deliver a report in writing to her office regarding the outcome/decision of Occupy Asheville's Coordinating Council meeting. City Clerk Burleson was directed to make copies available of the report to Council at their annual retreat on February 3.

The motion made by Councilman Bothwell and seconded by Councilman Pelly carried on a 5-2 vote, with Vice-Mayor Manheimer and Councilman Smith voting "no."

It was the consensus of Council to bring back Vice-Mayor Manheimer's motion on February 14, 2012, along with the resolution to eliminate corporate personhood.

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 12-31 - RESOLUTION OF CONSIDERATION IDENTIFYING AREAS WITH POTENTIAL FOR FUTURE ANNEXATION AND REDUCING CURRENT MAP OF CONSIDERATION**

Urban Planner Blake Esselstyn started out by stating this Resolution of Consideration does not indicate the beginning of an annexation process and it does not identify areas that the City of Asheville intends to annex. The resolution that does those things is called a Resolution of Intent and no Resolutions of Intent have been prepared or scheduled for 2012. He said that this is the consideration of a Resolution of Consideration identifying areas with potential for future annexation and reducing current map of consideration. Resolutions of Consideration expire after two years and the City has renewed them every two years for the last 10 years.

State statutes now require that a Resolution of Consideration, formerly an optional action, must be adopted by cities as a preliminary step for any city-initiated annexation process. The Resolution of Consideration serves the purpose of providing citizens with advance notice that certain areas in proximity to the City may, in the future, be subject to annexation. Each Resolution of Consideration is effective for two (2) years. The initial City of Asheville Resolution of Consideration was adopted on April 9, 2002 and revised maps were adopted by Council on March 9, 2004, March 7, 2006, February 26, 2008, and February 23, 2010. Since the time of adoption of the last resolution/map in 2010, North Carolina law has changed significantly regarding city-initiated annexations, adding a petition requirement before such annexations can take effect. As a result, the map staff has prepared to accompany this resolution has changed significantly compared to previous versions.

The accompanying map drastically reduces the area compared to what was previously included. The total area of consideration has been reduced from 33.1 square miles to less than one square mile. The areas that remain are predominantly road rights-of-way, government property, and a few privately owned properties in donut holes or other gaps identified by staff for future "clean-up" and for improving the provision of city services. This map does not preclude incorporation of municipalities in these areas nor does it preclude annexation by another municipality. All of the areas still would require more staff analysis before any annexation could be undertaken.

The revised North Carolina statutes now also require that property owners in the identified areas be notified by mail, and that the adoption of the resolution be recognized in two published newspaper advertisements. The twelve non-right-of-way properties included in the mapped area are owned by a total of seven property owners, two of which are government entities. The description of the area in the legal advertisement will be substantially shorter than would have been required for previously adopted areas.

Pros:

- Required by state law before any city-initiated annexation other than voluntary requests.
- Gives residents and property owners within the area advance notice of possible annexation.

Con:

- Newly required small cost of advertising and notification.

The cost of ads and mailings, which will be minimal, will be paid from the Planning Department's current operating budget.

City staff recommends that the Resolution of Consideration be adopted.

At the request of Vice-Mayor Manheimer, Mr. Esselstyn said the concept of annexing the I-26 corridor in Asheville was included in early versions of proposed annexations going back to 2004. There was some discussion done about whether this should be done at the legislative level in Raleigh from a petition from the N.C. Dept. of Transportation. In conversations with the Asheville Police Department they feel that the State Highway Patrol would welcome the annexation of this area into the City's jurisdiction. This would also fit into the category of closing gaps. In the case of I-40, the City limit line is drawn down the middle of the right-of-way. The Asheville Police Department has agreements with the other responding agencies that they will respond in this area, but the current alignment of the City limit does not correspond exactly with how people are actually providing services in those areas. That would also be a clean-up to include the entire right-of-way from the Blue Ridge Parkway basically west until the area where the entirety of the I-40 right-of-way is included.

In response to Councilman Hunt, Mr. Esselstyn briefly explained his discussions with the non-profits and individual property owners.

When Mayor Bellamy asked for public comments, no one spoke.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 12-31. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 260**

**B. ORDINANCE NO. 4052 - ORDINANCE AMENDING CHAPTER 16 OF THE CODE OF ORDINANCES CONCERNING CHANGES TO THE STANDARDS REGULATILNG PUSHCARTS AND ENCROACHMENTS ON PUBLIC SIDEWALKS**

Urban Planner Alan Glines said that this is the consideration of amending Chapter 16 of the Code of Ordinances concerning changes to the standards regulating push carts and encroachments on public sidewalks.

Over the past few years there has been growing interest in uses in the public right of way in the downtown area. This seems to be a product of greater pedestrian activity on the sidewalks and growth in the number of visitors in the downtown area. Applications for permits for outside merchandise and dining areas and pushcarts are a way to expand private enterprise with minimal upfront costs. Staff has responded to the growth in interest in pushcarts by adding several additional push cart sites in the downtown area where there is pedestrian activity and space along the sidewalk for placement. In 2011, nine additional spaces were added around the perimeter of Pack Square Park and other central locations. As staff has worked with the ordinance and responded to questions from the public, several opportunities have been identified to facilitate the push cart program and to clarify the regulations for other encroachments:

Section 16-143 Exceptions:

- Currently the ordinance states that community events (which may interfere with the regular operation of the pushcart) be posted in the Rankin Street Arcade. When the City Development office operated at 29 Haywood Street special events were posted in a display case inside the Rankin Street Arcade but, with the closure of that office, posting there is no longer practical. The proposal is to remove 'Rankin Street Arcade' posting requirement but to still post the community events on the City's website.

Section 16-144 Pushcarts:

- Currently pushcarts must stop work and remove their cart from the sidewalk at 10:00 PM each day. The proposal is to allow pushcarts operators to remain open until 11:00 PM each day if desired. Pushcart operators have requested this to expand their hours since downtown streets often have active pedestrian traffic after 10 PM.
- An additional proposal for this section is to add a new number 17 to state that applications for a pushcart are required to comply with Section 16-156(b)-*Encroachments*. This will clarify the requirement that pushcarts must apply for a sidewalk encroachment.

Section 16-146/147 Outdoor dining & Outdoor merchandise areas:

- Currently dining or merchandise areas less than 30 square feet are not required to have an encroachment agreement. The proposal is to change this so that all outdoor dining or merchandise areas are required to have an encroachment agreement. The encroachment agreement is a contract with the business owner and the City over the use of public right of way and protects the City from liability.

Section 16-158 Term; fees; transferability; display:

- Item (a) currently states that permits expire on June 30 of each year. The proposal is to allow permits to expire on a day determined by the Planning and Development Department Director after consulting with the Downtown Commission and other applicable boards. This change would allow the pushcart permits to follow more closely the actual operating season which begins in April instead of following the fiscal year date of July 1, which is 'halfway' through the season.
- Item (e) currently states that permits will be approved on a first come first served basis and application to be accepted at the start of business on the first Monday in June. The proposal would alter the wording to approve permits by a process determined by the Planning and Development Department Director after consulting with the Downtown Commission and other applicable stakeholders. Staff has received complaints about the current approval process because operators feel that premium sites never become available to new operators. Staff does not expect any changes to the approval process at this time but may look at other options for approving permits with the assistance of the Downtown Commission and pushcart operators in the future.

Section 16-160 Revocation:

- Item (6): During the months of active operation, the pushcart permit may be revoked if the operator fails to operate for a period of ***15*** consecutive days. The proposed change would require the pushcart to be in operation at least once in ***7*** days. The existing wording permits a pushcart operator to be at the location essentially 2 times per month and maintain their permit. The permits for specific locations are in high demand so it will be better to keep the pushcart locations more active. Staff expects to enforce this portion of the ordinance in a reasonable and practical way so that during times of inclement weather or other excused absences (vacations, illness, etc.), the seven day requirement can be waived or negotiated with the operator.
- Item (6) Currently pushcarts must operate starting in April through September or their permits can be terminated. The proposed change is to require the period of operation to extend until the end of October since the weather is still good and October is a popular tourist time for Asheville.

The Downtown Commission reviewed this ordinance changes at their December 13, 2011, meeting and voted unanimously 9-0 to support the amendments. Comments provided by the Commission were incorporated into the proposed amendment and centered around including the Downtown Commission and other applicable stakeholders along with the Planning Department in future changes to the way permits are issued.

This proposal does not directly relate to the goals outlined in the Strategic Operating Plan but is most closely aligned with the goal for "job growth and community development" by providing opportunities for business expansion in an area that can support the growth.

Pros:

- Provides consistent treatment of encroachments in the public right-of-way and protects the City from liability
- Improves permitting policies to adapt to downtown needs
- Expands the time and duration of the operation of pushcarts consistent with the increased popularity of downtown Asheville

Con:

- Requires operators to expand the operation of pushcart sites (a potential plus)

The changes are not expected to have a fiscal impact over what is already expended under the existing review process. In addition, costs associated with enforcement are expected to neither increase nor decrease.

City staff recommends approval of this wording amendment.

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No. 4052. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 269**

**C. RESOLUTION NO. 12-32 - RESOLUTION APPOINTING A MEMBER TO THE AFFORDABLE HOUSING ADVISORY COMMITTEE**

Vice-Mayor Manheimer said that Mr. Anthony Goodson, representing the Housing Authority, has resigned as a member of the Affordable Housing Advisory Committee, thus leaving an unexpired term until September 1, 2014.

On November 22, 2012, it was the consensus of Council to interview Jayden Gurney, as the representative from the Housing Authority.

Councilman Smith moved appoint Jayden Gurney to fill the unexpired term of Mr. Goodson, term to expire September 1, 2014, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 263**

**D. RESOLUTION NO. 12-33 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE GREENWAY COMMISSION**

Vice-Mayor Manheimer said that the term of Stephanie Pankiewicz, as a member on the Greenway Commission expired on December 31, 2011.

On January 10, 2012, it was the consensus of Council to interview Mary Weber and Tony Hauser.

After Council spoke highly of both candidates, Mary Weber received 6 votes and Tony Hauser received 1 vote. Therefore, Mary Weber was appointed as a member to the Greenway Commission to serve a three-year term, term to expire December 31, 2014, or until her success has been appointed.

**RESOLUTION BOOK NO. 34 – PAGE 264**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Alan Ditmore talked about smart growth.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 11:07 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – January 31, 2012 – 6:30 p.m.
Haw Creek Elementary School

Community Meeting - East Asheville

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Gordon D. Smith

Mayor Bellamy opened the meeting, welcomed the audience and introduced City Council members.

City Manager Jackson provided the audience with an overview of the City Council Strategic Goals.

Director of Transportation Ken Putnam provided the audience with an overview of the sidewalk program. He said recently completed projects consist of (1) Tunnel Road, from Asheville Mall to New Haw Creek Road; (2) Tunnel Road, from New Haw Creek Road to Avon Road; (3) Patton Avenue, from New Leicester Highway to Regent Park Boulevard; (4) Short Coxe Avenue, from Biltmore Avenue to Southside Avenue; and (4) Future Drive, from Wood Avenue to Ledgewood Village Apartments. The recently completed projects consist of 1.93 miles, at a cost of $641,090, and $63 per linear foot. Projects under construction include (1) Kenilworth Knoll/Tunnel Road, from Kenilworth Knolls to Chunns Cove Road; and (2) Lakeshore Drive, from Merrimon Avenue to Mt. Vernon Circle. The projects under construction consist of 0.42 miles, at a cost of $167,300, and $75 per linear foot +/-. Projects in the design stage are (1) Tunnel Road, from Governor's View Road to Maple Springs Road; (2) Tunnel Road, from Maple Springs Road to Craig Circle; (3) Tunnel Road, from Pleasant Ridge Drive to Veteran's Quarters' (4) Lakeshore Drive, from Osborne Street to Shorewood Drive; (5) Overlook Road, from Springside Road to Long Shoals Road; (6) Patton Avenue, from Regent Park Boulevard to Westgate Shopping Center; and (7) Patton Avenue, from New Leicester Highway to Parkwood Road. Projects in design state consist of 2.56 miles, at a cost of $1,886,000; and $140 per linear foot +/-. Potential projects for Fiscal Year 2012-13 in the north consist of (1) Lakeshore Drive, from Mt. Vernon Place to Osborne Road; (2) Lakeshore Drive, from Sherwood Drive (north) to Pine Tree Circle; and (3) Long Street, from Asheville Pizza Brewery to East Larchmont Road. Potential projects for Fiscal Year 2012-13 in the east consist of Riceville Road, from Tunnel Road northward for 600 feet +/-. Potential projects for Fiscal Year 2012-13 in the south consist of (1) Shiloh Road, from Hendersonville Road to the community center; and (2) Overlook Road, from Springside Road to Briarcliff Drive. Potential Fiscal Year 2012-12 projects in the west include (1) Brevard Road, from Fairfax Avenue to I-240; (2) Michigan Avenue, from Haywood Avenue to Waynesville Avenue; and (3) Sand Hill School Road, from Acton Circle to Sand Hill Road. Potential Fiscal Year 2012-13 projects consist of 1.35 miles; at a cost of $821,337; and $115 per linear foot +/-.

Director of Public Works Cathy Ball reviewed with the audience the Azalea Flood Control and Road Improvement Project. She explained how the projects element include (1) new entrance road; (2) repave Azalea Road; (3) relocate Swannanoa River Road; (4) stabilize Azalea Road embankment; (5) waterline extension to soccer complex; and (6) dam rehabilitation for flood mitigation.

Ms. Kim Engel, representing the East Asheville Sidewalk Initiative, thanked City Council for the sidewalks in east Asheville. Their focus now is on the future development along the Tunnel Road corridor from I-240 to Exit 55. Their goal is to create a more shopper friendly, attractive and safer environment for this part of Tunnel Road. Some of the ways this could be done are evaluating the number and configuration of traffic lanes, consideration of adding a median, evaluating speed restrictions and parking. They asked that City Council instruct staff to conduct a "Tunnel Road Corridor Study." They have contracted with a local artist who designed a mural that they will have installed on the retaining wall at the corner of Beverly Road and Tunnel Road to help create their identity.

Mayor Bellamy then opened up the meeting for questions. Questions/comments responded to consisted of: need for City's assistance with the parking lot and entrance road to Masters Park; request for portion of sidewalk on New Haw Creek Road; East Asheville library is in the need of a new roof; awareness of what is happening at the Nature Center; small old building on Masters Park property is a safety hazard and needs to be demolished; Municipal Golf Course could be an asset for the City with simple changes; request for more police patrols at Azalea Road soccer field during high use days; need for strong unified stand on why Asheville should keep our water system; urging that Asheville citizens become educated on the issue of the issue of losing our water system and get involved by calling, e-mailing or attending meetings with our legislators on this matter; and request for 62-slide presentation made by the City to the legislators regarding our water system be placed on the City's website.

Economic Development/Civic Center Director Sam Powers invited the public to attend the upcoming Southern Conference Men's & Women's Basketball Tournament at the Kimmel Center and the newly renovated Asheville US Cellular Center on March 2-5, 2012.

Mayor Bellamy and Council members expressed their appreciation for the community involvement.

At 8:00 p.m., Mayor Bellamy adjourned the meeting.

Magdalen Burleson
CITY CLERK

MAYOR

Friday – February 3, 2012 - 9:00 a.m.
UNC-Asheville, Wilma M. Sherrill Center

City Council Annual Retreat

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Mayor Bellamy convened the meeting and welcomed everyone to the annual City Council retreat.

Mayor Bellamy thanked UNC-Asheville for hosting City Council's retreat and introduced Ms. Anne Ponder, Chancellor, who thanked City Council for coming to the new Wilma M. Sherrill Center, home of the North Carolina Center for Health & Wellness. She briefed Council on things going on at their campus, along with student initiatives and community partnerships.

Mayor Bellamy thanked Vice-Mayor Manheimer and Councilman Pelly for their assistance on the retreat agenda. She then introduced Dr. John B. Stephens, Associate Professor of Public Administration and Government, who explained that the purpose of the retreat is (1) prioritize goals for 2012; (2) set clear direction for senior staff in supporting Council's priorities; (3) continue to build strong working relationships among Council members and with senior staff; and (4) understand and apply information on economic and financial projections.

The agenda was approved and expectations/guidelines for the retreat were agreed upon.

City Council went through an ice-breaker exercise. Using the Six Thinking Hats exercise, Dr. Stephens worked with Council on the different ways of thinking/engaging in a group.

Dr. Stephens then provided Council with the summary results of his pre-retreat interviews.

Dr. Stephens said that in preparation for the February 3, 2012, City Council retreat, he conducted individual, confidential telephone interviews with the Mayor and Council Members; however, he was not able to interview Councilman Bothwell. Because the following summary did not include Councilman Bothwell's points, his are highlighted in **bold**. In addition, other items mentioned by Council at the retreat are also highlighted in **bold** and are not necessarily common areas.

Some interviewees based their comments on the Strategic Operation Plan for 2011-12 and others did not. One interviewee requested that he read the January 4, 2010, report from City Manager Gary Jackson, "Asheville, NC 2010: A Financial Crossroads."

Dr. Stephens noted that while some Council had common areas of interest, Section 2 below are areas with distinct interest or goals.

There was considerable general discussion throughout the day on the common priorities outlined below, with each member voicing their opinion on the different objectives.

**Section 1. Areas of common or overlap of priorities**

General categories were addressed by several interviewees; the subpoints varied by interviewee

City financial resources

a) Stretch dollars, plumb all sources for support
b) Maintain 15% fund balance

c) Seek firm/dedicated revenue sources for particular needs or goals
d) Support city employees: include raises in next budget

Economic Development and Jobs

**a)** Riverfront Redevelopment Commission – great opportunities – **How can we help rejuvenate the River District; Possible County help for office staff**
b) Implement Downtown Business Improvement District (BID)
c) Clearer focus for community development funds; re-energize + Need to be careful on how we allocate these funds – monies will need to be stretched. Likely to have to say "No" for the first time to some recipient agencies
d) Entrepreneurship – lower barriers for new businesses and expand current businesses
e) Support green, local employers; targeted development efforts
f) More funding for Economic Development Commission
g) Other possible job impacts: outside agency funding; contracts with local vendors and minority-owned businesses
h) Support Chamber of Commerce via "5 by 5" plan for economic development
**i) Moving City money into local banks**
**j) Finish the Eagle-Market Street Redevelopment Project**

Affordable-Green-Sustainable

a) Extend PACE to commercial property owners
b) Sustainability/Safety – pedestrian and bicycle – continue infrastructure work
**c) Look for partnerships for Community Energy Audit**
**d) Funding for Tree Commission for education**
**e) Revisit water fluoridation**
**f) Consider a bond referendum to support goals**
**g) Maintain 80% carbon reduction goal**
**h) Direction on funding outside agencies**
**i) Partnership with the Asheville Sports Commission**
**j) Need to revisit density bonuses for other areas of smart growth**
**k) Extend transit service to holidays and on Sundays that has service on the main routes.**

Various Master Plans: coordination – resources – concrete progress

a) Examine how various master plans overlap, focus on how to move forward effectively and demonstrate pay-off to residents
b) Progress on specific corridors
**c)** Wilma Dykeman Riverway: Work with other stakeholders in river district to identify funding – is a big project, need to seek monies, but do not forfeit smaller projects; **request to define and focus on one area of the River to work on regarding implementation the Riveway Plan; apply density bonuses to entire River District; why is $50 Million Riverside Drive Project on the DOT Transportation Improvement Plan if it is a City-maintained street**
d) Example - plans on transportation, and arts and culture: see some results by June 30, 2012.
e) Longer-term work: overhaul the Unified Development Ordinance

Neighborhood Advisory Committee

a) Council and staff time to complete development
b) Questions: What are the goals and powers? How to assure a representative make up?
c) **Discussion and consensus to have draft ordinance be taken to the Housing & Community Development Committee prior to the full Council.**

Partnerships and key external relationships

a) Work to strengthen for better service coordination
b) Align daytime working population with financial support for city services

c) Improve relationships and be more current with other local governments and the state legislature, including a more direct role in Raleigh
d) **Seek resolution of the agreement with Henderson County for the Bent Creek property**
e) **Develop response on how to deal with the NC Dept. of Agriculture wanting the City to deed over the WNC Ag Center.**
f) **Develop consensus on how to approach the Airport Authority legislation**
g) **Develop consensus on the Metropolitan Sewer District Board make-up regarding Henderson County**
h) **Take a position as City Council regarding potential litigation affecting our water system**
i) **Need for a full-time liaison to the General Assembly; Councilwoman Manheimer and Councilman Davis to investigate cost, role, etc. and bring forward a recommendation to Council at March 27 meeting**
j) **Suggestion for annual meeting of City Council and the Buncombe County Commissioners**
k) **Partnership with Land-of-Sky to apply for regional dollars**
l) **Work with the Pack Square Conservancy in developing a plan to repay the City**
m) **Raise parking rates again and give City residents a discount on deck parking**

SOP 2011-12 language on Safety

a) Clarity in the goal for this area – Major heading reads "Asheville will be one of the safest ..." and Goal I reads "Make Asheville the safest City in America ..."
b) Concerns about
    1) Level of resources it would take to be "THE best" compared to a "very good level of safety"
    2) Potential imbalance of investment in Safety compared to other needs and goals

**Section 2: Areas with distinct interests or goals**

a) What is realistic for staff work? They do excellent work, but I do not want to overload them

b) Civic Center renovations – well along on this, but need to see this to completion. As part of this endeavor, seek partners to work on the next phases. **Possibility of working with Moogfest on a museum in the Civic Center.**

c) Funding for Business Improvement District: self-funded via Tax-Increment Financing

d) Public celebrations are important: work to assure them through private, public or mixed funding (i.e., 4th of July fireworks and New Year's Eve celebration)

e) Energy efficiency – extend current efforts via a low-interest loan pilot program in FY12-13 to help individual homeowners (home weatherization, etc.)

f) Expand our Memorandum of Understandings with UNC-Asheville and Warren Wilson to A-B Tech, Phoenix University**, and Lenoir-Rhyne**: help our staff (e.g., classes) and community (e.g. best practices, student internships)

g) Public Safety - new police chief will mean some new directions: Council to listen, learn, advise

h) Council rules of procedure
- Very concerned about breaking the confidentiality of closed sessions. All council members need to maintain confidentiality.

- Seek new rule: every resolution should be a single item/subject. Purpose: avoid having many things in a proposal that makes it complex or confusing. Desired result: clearer and more transparent local government. Mayor will work with Rules Committee on single-issue resolutions and other possible rule amendments proposed by City Attorney Oast.

i) Other areas of Affordability

Housing

- Restore Affordable Housing Trust Fund– to as high as $600,000 for upcoming fiscal year
- Consider a new formula: "Housing + Transportation" – for prioritizing location of affordable housing
- Commitment to mixed income neighborhoods: "lifecycle housing" – keep/create greater variety within each neighborhood. Goal: diversity within each neighborhood; end concentration of low income families in certain neighborhoods, and distribute infill development,

Transit

- Get more "choice riders" and greater convenience and reliability; thus re-commit to fully funding the transit system. Need a marketing budget to reach success for choice riders.
- Better service to the airport
- Any further steps toward Master Plan for Transit need additional funding

Food - Food Policy Council in development

- Food access – Housing and Community Development Department is seeking USDA loans for "food deserts" – be sure we are keeping an eye on opportunities to increase access. Keep looking
- Identify arable land parcels owned by city. Explore RFP process to lease to area farmers and gardeners
- Embrace Cooperative Extension10% goal: **encourage** government and other institutions to spend 10% of food budgets on local food sources.

Living Wage policy - expand threshold to cover larger contracts (above the current cap of "up to $90,000 contracts"); **extend our living wage policy to where the City only patronizes restaurant that are living wage employers; update on living wage policy coming back to Council in March, 2012**

Green and Sustainable

- City's Sustainability Department is trying to come up with community-wide CO2 reduction target. Would like some "rudimentary metric/s" for council to consider late in 2012 or early 2013 "whatever you can come up with."
- Management of resources: protect watershed – maintain our abundance of water – protect the public interest via maintaining public ownership.

Council previewed the 2nd trailer of the movie "The Hunger Games" which was filmed entirely in North Carolina and a good portion of City-owned property at the North Fork Reservoir.

Discussion surrounded Finance and Management Services Director Lauren Bradley report on economic and financial trends/projections. Responses Ms. Bradley did not have readily available would be provided to Council at a later date. Council agreed to (1) March 27 worksession on General Fund briefing; (2) April 10 worksession on Enterprise Funds and the Capital Improvement Plan; (3) April 24 Fiscal Year 2012-13 budget presentation; (4) May 22 budget public hearing; and (5) June 12 budget adoption.

At the suggestion of Councilman Hunt, it was the consensus of Council to have Council and possibly other government leaders and community partners attend the Budgetopolis exercise at the School of Government session in the fall.

It was the consensus of Council to have staff begin the process of narrowing down the objectives and at the March 27 worksession Council will then determine which objectives receive majority vote for next year's Strategic Operating Plan. In addition at the March 27 worksession, Council will also hold a worksession for General Fund Fiscal Year 2012-13 budget planning purposes.

**Wrap Up**

Each Council member voiced one thing they liked with the retreat and one thing they wished would have been different. However, all were pleased with Dr. Stephens as the facilitator.

**Adjournment**

The retreat adjourned at 3:41 p.m.

Magdalen Burleson
City Clerk

Mayor

Tuesday – February 14, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding (excused from meeting at 8:05 p.m.); Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Bothwell gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING FEBRUARY 14, 2012, AS THE "FIFTH ANNUAL UNITED SERVICES CREDIT UNION SCHOLARSHIP DAY"**

Mayor Bellamy read the proclamation proclaiming February 14, 2012, as the "Fifth Annual United Services Credit Union Scholarship Day" in the City of Asheville. She presented the proclamation to Esteve Coll, Business Development/Marketing Manager; Bill Carrington, Chief Executive Officer; and Tom Muncy, Chairman of the Board, who briefed City Council on some activities taking place during the day.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 24, 2012; THE CITY COUNCIL COMMUNITY MEETING HELD ON JANUARY 31, 2012; AND THE CITY COUNCIL RETREAT HELD ON FEBRUARY 3, 2012**

**B. RESOLUTION NO. 12-34 - RESOLUTION DECLARING IT A PUBLIC PURPOSE FOR THE CITY TO PARTNER WITH AND PROVIDE FOR THE PROCUREMENT, STORAGE, AND ALLOCATION OF SNOW FIGHTING MATERIALS TO EMERGENCY FACILITIES**

Summary: The consideration of a resolution finding the procurement of snow fighting materials for emergency facilities to constitute a public purpose and authorizing the City Manager to develop a policy for such procurement.

The City of Asheville has over the years partnered with public and private entities to procure snow fighting materials to include the Town of Black Mountain, UNC-Asheville, AB-Tech and Mission Hospital. The partnering with these entities benefits the City, primarily from a health and safety perspective, but also financially as the cost to the City is less. In order to more efficiently and effectively provide this service so as to minimize concerns of favoritism and unfair competition, staff will develop a policy consistent with Council's directions. Potential partners may include other nearby municipalities and towns, schools, hospitals and other similar type of emergency entities.

This action complies with the City Council Strategic Operating Plan in creating more collaborative and effective working partnerships between the City of Asheville and other key organizations.

Pros:

- Create common goal partnerships with other key organizations.
- Increase in bid quantities could potentially leverage overall reduced costs of materials.
- More boots on the ground in spreading materials along public thoroughfares leading into key facilities.

Con:

- Mid-storm deliveries would necessitate sensitive communications to sort out needed logistics.

There would be an additional cost in procuring the additional material(s); however, agreements would be structured to be cost neutral, and any expense would be offset by corresponding revenue in materials reimbursements.

City staff recommends City Council declare the procurement of snow fighting materials to be a public purpose and authorize the City Manager to develop and administer a policy to regulate its procurement.

**RESOLUTION BOOK NO. 34 – PAGE 265**

**C. RESOLUTION NO. 12-35 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO BE THE LOCAL GOVERNMENT PARTNER FOR THE ASHEVILLE ART MUSEUM GRANT APPLICATION TO THE NATIONAL ENDOWMENT FRO THE ARTS 2012 OUR TOWN GRANT**

Summary: The consideration of a resolution authorizing the City of Asheville to be the local government partner for the Asheville Art Museum grant application to the National Endowment for the Arts 2012 *Our Town* grant.

The National Endowment for the Arts (NEA) offers numerous grants in a variety of art and design categories. For the second year, the NEA has offered the *Our Town* grant for creative placemaking projects that contribute toward the livability of communities and help transform them into lively, beautiful, and sustainable places with the arts at their core.

*Our Town* grants will invest in creative and innovative projects in which communities, together with their arts and design organizations and artists, seek to improve their quality of life, encourage creative activity, create community identity and a sense of place, and revitalize local economies.

Through *Our Town* projects, the NEA intends to achieve the outcome of *Livability: American communities are strengthened through the arts.* The anticipated long-term results for livability projects are measurable community benefits, such as growth in overall levels of social and civic engagement; arts- or design-focused changes in policies, laws, and/or regulations; job and/or revenue growth for the community; and changes in in-and-out migration patterns.

The NEA anticipates awarding grants in the amount of $25,000, $50,000, $75,000, $100,000, or $150,000 which also requires a nonfederal dollar for dollar match. The grant applicant, not the local government partner, is responsible to provide the match. The grant deadline is March 1, 2012.

According to the NEA, the key to the success of creative placemaking involves the arts in partnership with a committed governmental leadership and the philanthropic sector. These

partnerships must involve two primary partners: a nonprofit organization and a local government entity.

This year the City of Asheville in the Parks, Recreation and Cultural Arts Department accepted proposals from eligible non-profit cultural (arts or design) organizations in Asheville who need a local government partner as part of the NEA *Our Town* Grant application. The following five organizations submitted proposals:

Asheville Art Museum: $150,000

To support the next phase of the project development for the Museum's much needed renovation and expansion plans: the design development phase. The Museum will meet the required 1:1 match out of existing funds. The expansion and renovation project aligns with four vision principles as outlined in the Downtown Master Plan and is listed explicitly as a priority of the Downtown Master Plan in Strategy 1.

Asheville Design Center: $25,000

To support a community-driven process to develop a series of prototype bus shelters that meet the Transit Department's design standards and train community members in the design-process and construction methods. The ADC will meet the required 1:1 match through in-kind professional design services. The project addresses four sections of the Transit Master Plan.

Center for Craft, Creativity & Design: $25,000

To engage the community in a series of lectures, charrettes and discussions that will foster interaction among community members, arts organizations, artists and the different sectors (public, private, non-profit). The CCCD will match $15,000 and partners will be asked to provide the remaining $10,000 funds in cash and in-kind contributions. The project supports the Parks, Recreation, Cultural Arts and Greenways Master Plan and the Downtown Master Plan.

Montford Park Players: $75,000

To support design cost for improvements at the Hazel Robinson Amphitheatre which includes a guest services facility, accessible paths, upper stage house, and improvements to audience seating area. The Montford Park Players will meet the required 1:1 match out of existing funds. The project supports the Parks, Recreation, Cultural Arts and Greenways Master Plan.

YMI Cultural Center: $25,000

To support Asheville Wordfest and to help make the festival a nationally and globally recognized and attended poetry festival. The YMI will raise money to meet the required 1:1 match.

The proposals were reviewed by the Public Art and Cultural Commission at its meeting on January 26, 2012. The Commission was asked to recommend one proposal to City Council. Three Commission members recused themselves from the process due to conflict of interest. Representatives from each applying organization were invited to speak about their proposals. The Commission motioned to recommend the Asheville Art Museum proposal which passed with a 3-2 vote. A second motion was made to support the Asheville Design Center proposal which failed 2-3.

Pros:

- The grant provides support for a variety of projects and activities;

- The arts are an integral part of Asheville;
- Provides additional funding for a project or activity.

Con:

- None

There is no direct financial impact but staff time and resources will be required.

The Public Art and Cultural Commission recommends City Council to approve the City of Asheville to be the local government partner for the Asheville Art Museum's NEA's 2012 Our Town grant application.

**RESOLUTION BOOK NO. 34 – PAGE 266**

**D. ORDINANCE NO. 4053 - ORDINANCE REDUCING THE SPEED ON MEADOW ROAD FROM AMBOY ROAD TO VICTORIA ROAD TO 35 MILES PER HOUR**

Summary: The consideration of an ordinance concurring in a speed limit change on SR 3556 (Meadow Road) from SR 3556 (Amboy Road) to Victoria Road.

According to state law (NCGS # 20-141), the statutory speed limit in North Carolina is 35 mph inside municipal corporate limits for all vehicles and 55 mph outside municipal corporate limits for all vehicles except for school buses and school activity buses.

Furthermore, when an engineering and traffic investigation determines that a speed limit other than the statutory 35 mph speed limit would be reasonable and safe along a state-maintained street that is inside municipal corporate limits, a concurring ordinance from the municipality is needed. Typically, these investigations are done by municipal staff but it is not unusual for the N.C. Dept. of Transportation (NCDOT) to do the investigations along their streets.

The Division 13 Traffic Engineer for NCDOT recently completed an engineering and traffic investigation and determined that the existing 45 mph speed limit on SR 3556 (Meadow Road) from SR 3556 (Amboy Road) to Victoria Road should be changed to 35 mph. It has been concluded that a 35 mph speed limit would be reasonable and safe for the current traffic conditions. City traffic-engineering staff agrees with the recommended action.

This action complies with the City Council Strategic Operating Plan in the Safety focus area by improving the "street experience" for all users including pedestrians, bicycles, and motorists in a medium commercial corridor.

Pros:

- The North Carolina Department of Transportation did the engineering and traffic investigation to determine the reasonable and safe speed limit.
- Since the subject street is a state-maintained street, the North Carolina Department of Transportation will install and maintain the appropriate signs.

Con:

- There are no known cons with the subject action.

There is no fiscal impact with the subject action. The NCDOT will be installing and maintaining the appropriate signs.

City staff recommends that City Council approve an ordinance concurring in a speed limit change on SR 3556 (Meadow Road) from SR 3556 (Amboy Road) to Victoria Road from 45 mph to 35 mph.

**E. MOTION APPROVING ANCILLARY PERMITS AND PERMISSIONS ASSOCIATED WITH THE SOUTHERN CONFERENCE BASKETBALL CHAMPIONSHIPS**

Summary: The consideration by Council to approve ancillary permits and permissions associated with the Southern Conference Basketball Championships as is consistent with City policy to ensure a safe and successful tournament experience.

The Southern Conference Basketball Championships will be held in Asheville March 2-5, 2012. Various permits and permissions as is consistent with City policy will be necessary to ensure a safe and successful event. These include permits and permissions for the following:

- Street banners: approximately 70 street banners paid for and provided by the Asheville Buncombe Regional Sports Commission (ABRSC) placed in strategic locations in the central business district and other major corridors; the application fee has been processed, so no fee waiver is requested.
- A fan village in the empty lot across from the Civic Center, to include two City-approved food trucks; no fees will apply to city services and permits.
- Miscellaneous non-advertising wayfinding to direct both vehicular and pedestrian traffic for which there is no associated fee, so no fee waiver is requested.
- Miscellaneous non-commercial tournament welcoming banners placed at the Asheville U.S. Cellular Center for which there is no associated fee, so no fee waiver is requested.
- Use of designated City parking lots and portions of City parking garages for parking for officials and staffing for the tournament: parking services will receive a lump sum in the amount of $6000 from the ABRSC to offset costs associated with reserving designated public parking for tournament use.
- The City Transportation Department, in conjunction with APD and the Public Works Department, intends to close several streets adjacent to the Asheville U.S. Cellular Center in a pattern developed to address public safety concerns at high attendance events held at the Center. No fees will apply.

This action supports the City's Strategic Plan to make Asheville a safe city and expand partnerships to achieve common economic development goals.

Pro:

- Public safety component of holding a high attendance event in downtown Asheville.

Con:

- Street closures on Friday and Saturday may affect access to the rear parking lot of the Basilica.

There is a substantial positive net economic impact for the City associated with hosting the championships. Highlights include:

- Number of Visitors: 8,000
- Number of Room Nights: 4,000
- Economic Impact: $4,000,000
- Largest Sporting Event in Asheville's History
- National Television Exposure

Staff recommends Council approve the ancillary permits and permissions associated with the Southern Conference Basketball Championships as is consistent with City policy to ensure a safe and successful tournament experience.

**F. ORDINANCE NO. 4054 - BUDGET AMENDMENT FROM THE FRIENDS OF THE NATURE CENTER FOR CAPITAL PROJECTS AT THE WNC NATURE CENTER; AND TECHNCIAL BUDGET AMENDMENT MOVING PREVIOUSLY BUDGETED CONTRIBUTIONS FROM THE FRIENDS OF THE NATURE CENTER**

Summary: The consideration of 1) a budget amendment in the amount of $66,036, from contribution provided by the Friends of the WNC Nature Center to support the design and installation of a playground and other visitor enhancements at the WNC Nature Center, and 2) a technical budget amendment in the amount of $75,000 to move previously budgeted contributions from the Friends of the WNC Nature Center from the City's Capital Projects Fund to the Special Revenue Fund.

The City of Asheville in the Parks, Recreation & Cultural Arts Department has received a contribution from the Friends of the WNC Nature Center to support the design and installation of a playground and other visitor enhancements at the WNC Nature Center.

The Friends of the WNC Nature Center, a 501c3 non-profit charity, is a community group of individuals, businesses and grantors who together support the WNC Nature Center with funding to provide an enriching and educational experience for the Center's visitors.

The action complies with the City Council 2011-2012 Strategic Plan Goal of fiscal responsibility of exploring alternative for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities. The action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it increases department funding with alternative funding and ensuring a high level of service in parks and facilities by addressing capital maintenance of existing parks and facilities to meet community standards.

Pro:

- Provides additional funds to support capital improvements and the strategic plan at the Nature Center

Con:

- None

These expenditures will be fully funded with a donation from the Friends of the Nature Center in the amount of $66,036 that has been received; thus, there is no net fiscal impact to the City's operating budget. In addition, to more accurately reflect the nature of the contributions received from the Friends of the WNC Nature Center, accounting staff is requesting to move previously budgeted contributions from the City's Capital Projects Fund to the Special Revenue Fund. There is no fiscal impact to this technical change.

City staff recommends City Council to approve 1) the budget amendment authorizing the City Manager to accept the donation from the Friends of the WNC Nature Center in the amount of $66,036.00; and 2) the technical budget amendment in the amount of $75,000 to move previously budgeted contributions from the Friends of the WNC Nature Center from the City's Capital Projects Fund to the Special Revenue Fund.

**ORDINANCE BOOK NO. 27 – PAGE 273**

**G. ORDINANCE NO. 4055 - BUDGET AMENDMENT TO FUND CITY'S CONTRIBUTION FOR N.C. STATE TREASURER'S OTHER POST EMPLOYEMENT BENEFIT FUND**

Summary: The consideration of a technical budget amendment in the amount of $3,025,866 from General Insurance Service Fund Reserves and Enterprise Funds' reserves to fully fund the City's initial contribution to the North Carolina State Treasurer's OPEB Fund.

On December 13, 2011, City Council approved a resolution authorizing the City's participation in the State Treasurer's investment trust for local government OPEB funds and related Trust Agreement beginning with an initial FY 2011-12 contribution of $3,025,866. In order to make that contribution, however, Council must approve a budget amendment to provide authorization for the appropriation of the cash and the subsequent payment to the North Carolina State Treasurer's OPEB Fund. The $3,025,866 contribution is being funded as follows: $2,565,529 for the governmental fund liabilities is being appropriated from unassigned internal service fund reserves and $460,337 for the proprietary fund liabilities is being appropriated from each respective enterprise fund (e.g. water, stormwater, parking, etc.).

Pros:

- Provides budget authorization for the December 13, 2011 Council-approved resolution authorizing the City's participation in the State Treasurer's investment trust for local government OPEB funds and related Trust Agreement beginning with a contribution of $3,025,866.

Cons:

- None.

After funding the net OPEB liability, as of June 30, 2011, the Health Care Internal Services Fund will have $1,393,802 in unrestricted net assets. Staff recommends that this amount remain in the Internal Services Fund to fund unplanned expenses in the City's self-insurance programs. The reserves that are being appropriated from the City's Enterprise Funds will not significantly impact the fund balance levels in any of those funds.

City staff recommends City Council approve the technical budget amendment in the amount of $3,025,866 from General Insurance Service Fund Reserves and Enterprise Funds' reserves to fully fund the City's initial contribution to the North Carolina State Treasurer's OPEB Fund.

**ORDINANCE BOOK NO. 27 – PAGE 275**

**H. ORDINANCE NO. 4056 - TECHNICAL BUDGET AMENDMENT FOR ACCOUNTING CHANGES FROM EXTERNAL AGENCIES FOR FUEL AND FLEET REPAIRS PROVIDED BY THE CITY**

Summary: The consideration by City Council of a technical budget amendment to reduce the General Fund budget by $1,221,594 to reflect accounting changes related to the recording of revenue received from external agencies for fuel and fleet repairs provided by the City.

The City's Fleet Maintenance Division provides fuel and limited repair services to certain governmental units and non-profit agencies, including Mission/St. Joseph's Hospital and the Metropolitan Sewerage District. The City charges these agencies for the cost of the fuel and repair parts along with a 5% markup for fuel, sublet repairs, and, non-stock parts; and a 30% markup for stock parts.

In previous years, the purchase of fuel (approximately $1 million annually) for external agencies was reflected as a general government expense; thereby over inflating the City's cost of general government activities. The funds received from these charges were recorded in the General Fund as revenue. At the end of FY 2010-11, the City changed its method of accounting for these funds such that these monies are now being recorded as an offset against the expense

of providing the service so that these external agency activities are not reflected in City government expenses.

This change was finalized after adoption of the current budget, therefore the FY 2011-12 General Fund budget needs to be revised downward. The technical impact of this change is a reduction in the FY 2011-12 General Fund revenue and expense budget of $1,221,594.

This action complies with the City Council Strategic Operating Plan goal of "Operate the City of Asheville to the highest levels of fiscal responsibility."

Pros:

- Aligns the budget with current accounting procedures.
- Provides an apples-to-apples comparison with FY 2010-11 financial results and the upcoming FY 2012-13 proposed budget.

Con:

- None.

As noted above, the FY 2011-12 General Fund budget will show a reduction of $1,221,594

City staff recommends City Council approve the technical budget amendment in the amount of $1,221,594 to reflect accounting changes related to the recording of revenue received from external agencies for fuel and fleet repairs provided by the City.

**ORDINANCE BOOK NO. 27 – PAGE 279**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Smith moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Pelly and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. ASHEVILLE-BUNCOMBE REGIONAL SPORTS COMMISSION

Mr. Ben VanCamp, Executive Director of the Asheville-Buncombe Regional Sports Commission, explained their mission, vision, history and funding.

They (1) work with existing events on growth, i.e., Carolina Day Holiday Basketball Classic; (2) incubate new events from within our community, i.e., Gala Gymnastics Event; and (3) recruit new events to our community, i.e., Friends of Mission Charity Classic Symetra Tour.

Their impact for previous events from November 2011 to January 2012 include: 5 events, 2,500 room nights, 3,000 out of town visitors, and an estimated economic impact of $1,500,000. Upcoming planned events from February 2012 to June 2013 include: 9 events, 14,300 room nights, 20,000 out of town visitors, and an estimated economic impact of $14,930,000.

He provided statistics on the Southern Conference in which the City will be host in June 2010 for the 2012 – 2014 Championships, and recognized the SoCon local organizing committee.

They receive community-wide support from community partnerships, financial support, volunteer support and educational partnerships. The SoCon Basketball Championships estimated impact consists of 8,000 visitors, 4,000 room nights, and an estimated economic impact of $4,000,000. It is the largest sporting event in Asheville's history and will have national television exposure on ESPN on Monday, March 5. The Big South Basketball Championships estimated impact consists of 1,500 visitors, 1,311 room nights, and an estimated economic impact of $1,100,000. It will also have national television exposure on ESPNU on March 1, and ESPN on March 3.

Mr. VanCamp responded to Councilman Bothwell when he asked how the numbers of the economic impact were reached.

On behalf of City Council, Mayor Bellamy thanked the Sports Commission for their hard work, and City staff Sam Powers and Janet Dack who have done a wonderful job in this on-going effort.

Councilman Davis urged the public to attend the Southern Basketball Championships and the Big South Basketball Championships for an exciting time in March.

**B. UPDATE ON LAKE CRAIG/AZALEA ROAD PROJECT**

Stormwater Services Manager McCray Coates said that this is an update on the Lake Craig/Azalea Road Project.

One of the largest projects the Public Works Department has currently underway is the Lake Craig/Azalea Road project. Through this project, the City of Asheville has the opportunity to provide improved access to city facilities along Azalea Road, provide a much needed water connection to the John B. Lewis Soccer Complex and to provide additional flood protection to Biltmore Village. McGill Associates, a local engineering firm, is the lead consultant for this project.

Azalea Park is a large attraction that hosts a regional soccer complex along with the Nature Center. This complex draws visitors from throughout the region which increases the traffic along Azalea Road. The City is proposing to widen and improve the roadway in this section. The City proposes to combine flood control recommendations and utilize material from floodplain fill removal for the roadway improvements. The plan also includes a bike and pedestrian facility.

The City also plans to provide a much needed water supply connection to the soccer complex. Currently, the pavilion does not have a potable water source.

The Hurricane Recovery Act of 2005 (Senate Bill 7) allocated funds for planning and implementation of projects to aid in flood damage reduction for North Carolina communities hardest hit by the 2004 hurricane season. Through a previous study performed by Brown and Caldwell, the Lake Craig Project has shown potential to provide significant flood reduction benefits. The flood control features of phase I of this project include stream relocation and restoration, removal of floodplain fill and flood bench restoration. Phase II would include the rehabilitation or replacement of an existing dam. Phase II is currently not funded, the City will look for future funding through the Corps of Engineers and NC Division of Water Resources for Phase II of this project.

On May 26, 2009, by Resolution No. 09-108, the City Manager was authorized to enter into a Feasibility Cost Share Agreement for the Swannanoa Flood Risk Management Project with the Army Corps of Engineers to provide professional services for a feasibility study for reducing flood damage in the Swannanoa River Watershed. That resolution allows the City Manager to modify the existing agreement with the US Army Corps of Engineers allowing engineering services performed by McGill Associates to be utilized as matching work in kind funds for the Corps Feasibility Cost Sharing Agreement.

The Corps of Engineers has been very involved with the flood reduction component of this project. Federal funding delays has caused a loss of time on the review efforts of the Corps. City staff along with McGill Associates have worked diligently with the Corps to insure that all possible matching work in kind funds can be granted to this project.

City staff has been involved with discussions with the Corps of Engineers to try to identify ways to utilize any excess work in kind credits for current and past city flood reduction efforts that may be remaining from the Feasibility study. In order for this to take place, congressional language will need to be drafted and approved. The work in kind matching funds will be important to maximize local and state funds necessary for Phase II of this project.

This action complies with the City's plans and commitments to administer the remaining $2.1M of Senate Bill 7 funding consistent with a contract executed with the North Carolina Division of Water Resources on April 1, 2007. In addition, this project has complied with the Council's Strategic Plan to provide a safe community for our citizens.

Pros:

- Implements the priority objective of the Swannanoa Flood Risk Management Project
- Provides safe access for the local residents along with the citizens that visit these important city facilities
- Provides water to the soccer complex
- Provide bike and pedestrian linkages that connect the soccer complex with the Nature Center
- Priorities are set for expending the remainder of state flood mitigation funding and for pursuing future state and federal grant funding for this project.

Con:

- The City of Asheville currently does not have the funding to complete the construction and final design of Phase II of project. Construction/rehabilitation of the dam will require the involvement and funding of the US Army Corps of Engineers or the North Carolina Division of Water Resources.

Staff has budgeted $1,263,206 for the engineering services necessary to complete Phase I of the Lake Craig Project. The total estimated cost for Phase I of this project, which includes the engineering services as well as the roadway, utilities, and river relocation construction, is $4.15 million. Phase I is currently fully funded. City staff is working with the Army Corps of Engineers as well as the North Carolina Division of Water Resources to identify future funding for the completion of the Dam construction which will be associated with Phase II of this project. These sources would require matching contributions from the City in order to secure these funds.

No action is requested at this time.

Mr. Coates responded to questions raised by Councilman Hunt, stating that this will not prevent flooding, but will mitigate flooding; and the City is trying to build in different elements in this project, i.e., bike lanes and greenways.

**C. RESOLUTION NO. 12-36 – RESOLUTION SUPPORTING ASHEVILLE'S RETENTION OF ITS WATER SYSTEM**

Vice-Mayor Manheimer provided Council with an overview of the process to date (1) Study Bill introduced in the 2011 legislative session to study the history and current operational aspects of the Water System. There are three possible outcomes: (a) City of Asheville continues to operate the System (i.e. no change); (b) Water System is transferred to the Metropolitan Sewerage District; or (c) An independent authority is created to manage the system; (2) January

23, 2012: First Study Committee meeting; (3) Late February: Public meeting in Asheville; and (4) April: Possible decision made.

She provided Council with some general information of the current system as follows: (1) The Water System, currently operated by the City of Asheville, covers the entire City; ~27% of Buncombe County outside the City; and ~2% of Henderson County; (2) Water System Bond Rating: Aa3, AA; (3) 20,000 acres of protected watershed in Buncombe County; (4) Two reservoirs holding roughly 7 billion gallons of stored water; (5) Two water treatment facilities treating water from those reservoirs; (6) One "run of river" water treatment facility located along the Mills River in Henderson County; (7) Permitted treatment capacity of 43.7 million gallons per day; (8) Average daily demand of about 21 million gallons per day; (9) System Service Area – 183 square miles; and (10) 1661 miles of water lines.

Using a graph, she showed the City's population from 1940 to 2010. Some statistics include (1) Asheville supports a larger population than its residential population suggests; (2) Asheville has the highest daytime to nighttime population ratio in NC; (3) Asheville takes more calls for fire and emergency services per capita than 17 other major NC cities; (4) Asheville would need to add 51,000 more people to its population to bring its call volume more in line with the state average; and (5) From 1950-2000, Asheville captured 10.75% of the population growth in the county; state average of 53.33% for the nine largest cities in NC. Over the last 50 years, Asheville has been the most inelastic city of all major cities in NC. During that time, Asheville captured just 10.75% of population growth in the county. The state-wide average was 53.33%. This means that the burden to pay for usage and the demands and the vision for Asheville that's shared by 150,000 people is being shouldered by the 79,000 who actually live within our jurisdictional lines.

Using a graph, she showed the City's fiscal responsibility (tax rate), compared to the tax rates in North Carolina.

She also used graphs of other cities to show the (1) Fiscal Year 2010-11 Monthly-Equivalent Residential Water Bills (5,000 gallons consumption); (2) Fiscal Year 2010-11 Monthly-Equivalent Commercial Water Bills (25,000 gallons per month); and (3) Fiscal Year 2010-11 Monthly-Equivalent Commercial Water Bills (500,000 gallons per month).

Regarding the City's management of the system, (1) Enterprise Fund for Water Operations Department of the City of Asheville; (a) Utility Fund Forecast (Rate Model) For 5 Years; (b) Utility Fund capital plans based on: required NCDOT Projects, City Council; (c) Initiatives, Brown and Caldwell's 2006 Capital Improvement Plan, JJ&G's 2009; and (d) Water Master Plan, and needs prioritized by the Computerized Maintenance Management System; and (2) City Operations Consistently Recognized for Excellence; (a) Water Resources ISO 14001 Environmental Management System; (b) Accredited Fire, Police and Parks & Recreation Departments; (c) Outstanding Planning Award for Open Space and Historic Resources; and (d) GFOA National Recognition for Budget and Comprehensive Financial Reporting.

She shared with Council some third party assessments, as follows: (1) "The staff of Asheville's Water Resources Department has been proactive in planning for their future financial needs to pay for capital investment in their system as well as to operate and maintain those assets that are currently in place in order to continue to provide high quality service. Equitable recovery of costs has been a key objective in their proactive financial planning." *Raftelis Financial Consultants*; (2) "They stand out for their excellent stewardship of the water resources of the Asheville, Buncombe and Henderson County region. Their industry leading practices include a fully developed asset management program that has resulted in a stable rate structure and high reliability—two factors that are key to economic development of the area." *Rick Carrier, Vice President, Brown and Caldwell*; (3) "As I worked with the City of Asheville on a Water System Master Plan, the City's goal was apparent -- provide a high level of service to customers, while keeping rates affordable for all. Asheville staff strived with enthusiasm to meet that goal."

*Jacobs Engineering (formerly Jordan, Jones & Goulding), Eric Nease, P.E.*; (4) "The Asheville Water Resources Department continues to maintain a highly effective environmental management system under the ISO 14001 International Standard. The recent audit of the system confirms a high level of competence and commitment to environmental excellence throughout the department." *Charles Lee, NSF Lead Auditor, following our 2011 ISO 14001 annual audit*; and (5) "Employees possess high levels of certification and have been recognized for excellence." "Confidence in the Utility's ability to use resources wisely, to cut costs and provide quality service has gained support within the business and commercial community for funding infrastructure replacement." *QualServe Peer Review Team.*

In closing, she said that (1) we have an appropriate and experienced management team in place; (2) consistent Moderate Growth of Water System Demand; (3) excellent financial condition; (4) consistent investment in water system infrastructure; and (5) manageable capital needs with a comprehensive Capital Improvement Plan.

Next steps include (1) Consideration of the resolution below; (2) Continue to provide input to the Study Committee; (3) Educate citizens on the process; and (4) Continue cooperation with the Metropolitan Sewerage District.

The resolution before Council reads: "WHEREAS, the City of Asheville has operated a public water system in the City of Asheville since as early as 1900; and WHEREAS, water provided by the system remains plentiful, safe, and among the cleanest and purest available anywhere; and WHEREAS, said water system currently serves all of the City of Asheville, approximately 60 percent of Buncombe County, and a portion of Henderson County; and WHEREAS, the water system includes a pristine 20,000 acre watershed which Asheville has diligently protected for decades and will continue to do so, two reservoirs and three treatment plants with a capacity of over 40 million gallons per day, over 1,600 miles of transmission and service lines, 24 pump stations, 21 storage reservoirs, and associated equipment; and WHEREAS, through operation of the water system Asheville has supported and will continue to support growth and economic development for the region; and WHEREAS, since 1991, the City has issued over $100 million in revenue bonds and other financing for the repair, maintenance, and improvement of the water system, including $39 million in 2007; and WHEREAS, the water system and the City's Water Resources Department are recognized by State and national organizations as being well run and financially sound; and WHEREAS, the development and operation of the water system in Asheville and Buncombe County is similar to other systems across the State; and WHEREAS, there is no compelling reason to transfer responsibility for the operation or control of the water system from Asheville to another entity. NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE AS FOLLOWS: (1) Through leadership and sound governmental practice, the City of Asheville has developed a water system that is well run, financially sound, and able to meet water demand in the area for the foreseeable future; (2) The City is committed to continuing to maintain and improve the water system, and to provide water to its customers at fair and reasonable rates and in accordance with recognized best practices for the industry; and (3) The water system is a public asset held by the City of Asheville for the benefit of its citizens and regional customers. The City operates the water system as a public enterprise pursuant to North Carolina law. Ownership and operational control of the water system should remain with the City of Asheville."

In closing, the City doesn't have an opportunity of financial gain because we are running this water system. The reason that it's important that a city, like Asheville, run this water system is because these are valuable assets from an environmental and resource prospective and we need to protect them. She felt the citizens of Asheville trust City Council do to just that. We all have grave concern about another entity owning these assets and running this system without the input from the elected officials of the City of Asheville.

Councilman Hunt said that Senator Nesbitt highlighted how since 1930 when the financial crash hit Asheville especially hard disrupting the financing of our water system, we have had

fights about our water system. He felt one interest of Rep. Moffitt in moving this forward is to try to get the fighting over the water system behind us. He hoped that what comes of this is that Asheville retains its system and we all move forward. A very important part of all this is we have been unable to charge differential rates, thus prohibiting us to incentivize outlying areas to come into the City. Asheville is a relatively small city with a lot of development outside our boundaries. Our taxpayers are unduly burdened to provide services and infrastructure for people who come in by day and to visit. In addition to not having the advantage of annexation which would help us afford to provide these necessary services in infrastructure, the fighting has made it so that our other local government partners and state legislators have found it difficult to support Asheville's fiscal life. He hoped that we can get fighting over water behind us, and ask Rep. Moffitt, others in the state legislature, and partners in other local governments to help us look also at the fiscal plight Asheville faces so we can be a better regional capital in western North Carolina.

Councilman Pelly was pleased to support the resolution. In addition to consideration of the resolution before Council, he hoped Council will, in two weeks, support a second water system related resolution. Given that (1) proposed state legislation opens the very real possibility of seizure of this irreplaceable asset, owned by the City of Asheville for the benefit of customers in Buncombe and Asheville; (2) three of the four state-sponsored public hearings regarding this legislation will take place 250 miles away from Asheville (in Raleigh), limiting the possibility of local participation; (3) the only local hearing will be held 15 miles away from our City center at the WNC Agricultural Center; (4) two of Asheville's three representatives in the General Assembly (representing 69% of the affected water customers) have not been invited to serve on the committee considering this issue; and (5) the fundamental importance safe, clean and affordable water plays in the lives of each of us, it is imperative the City of Asheville conduct an independent public hearing, designed to let all customers of the water system, Buncombe and Asheville alike, express their opinion on this matter of vital public importance. In two weeks he will present a resolution calling for a public hearing designed for this purpose and am hopeful that his fellow council members will support this measure.

Mayor Bellamy said that in order to make sure that she was well informed on the original Bill that was proposed (House Bill 925), she found another bill (House Bill 708 – A Bill to be Entitled An Act to Direct the Environmental Review Commission to Study the Reduction and Consolidation of the Statutory Models for Establishing, Operating, and Financing Certain Organizations that provide Water and Sewer Services in the State) is still active. The places impacted are Asheville and Wilmington. She contacted the Mayor of Wilmington to make sure that he was aware that a Bill had been entered to study their water system. She stressed the importance of City Council staying abreast of these issues. House Bill 708 has not been assigned to a study committee, and her concern is what else is out there. We must educate the public on these bills that are being created without letting the affected local governments know. She was also concerned that we are not at the table on the bills that affect our system and systems like ours. It is imperative that we stay informed.

Councilman Smith said that when the Study Committee decided to convene, he started doing homework around the water system as well, and was reintroduced to the excellence that the City of Asheville has been practicing with regard to its water resource since taking full management of that since the dissolution of the water agreement in 2005. This Study Committee has introduced an ambiguity about the future of the water system. The present state of the system is excellent. We know we have an aging system that we have to invest in and City Council has chosen to do that in 2007 with the $40 Million investment. We know it won't be our last investment. When we have 1,661 miles of pipes in the mountains, we will be fixing them on-going for as long as they are in the ground. Should something change, he didn't feel guaranteed that we will have that same state of excellence that we have found with our current management system. This water system was the first in the state to get an ISO 14001 Certification for its environmental management practices. This water system has been running lean and mean and efficiently. We have some of the best water in the country and we are richly blessed with an abundance that is the envy of most other communities in the nation. That is where we are at now

and if there is a call to change that, then he can understand why our customers, whether they live in or outside of the City, are nervous.

Councilman Davis felt that it was the intent of Council in 2005 that we retain the water system and we have consistently invested in our system. He was pleased to support this resolution.

Mr. Alan Ditmore spoke to the issue of using water to incentivize people to be annexed.

Mayor Bellamy hoped that Council will also be open to a resolution supporting Asheville's retention of our Airport as there is also a Bill to take Asheville's Airport away and make it into an independent authority.

Councilman Davis moved for the adoption of Resolution No. 12-36. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

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**IV. PUBLIC HEARINGS: None.**

**V. UNFINISHED BUSINESS:**

Councilman Hunt moved to consider the discussion regarding a charitable contribution combined campaign prior to the discussion on regulating the use of City property. This motion was seconded by Councilman Davis and carried unanimously.

**A. CONSIDERATION OF A CHARITABLE CONTRIBUTION COMBINED CAMPAIGN FOR CITY OF ASHEVILLE EMPLOYEES**

Vice-Mayor Manheimer moved to recuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously. At this time, Mayor Bellamy handed the gavel over to Vice-Mayor Manheimer to preside over the meeting and left the Council Chamber.

Director of Finance and Management Services Lauren Bradley said that this is the consideration of a motion to accept the combined campaign proposal and approve the standard operating procedure for a combined campaign for City of Asheville employees.

At the September 13, 2011, Finance Committee meeting, a representative from EarthShare North Carolina requested that the City consider expanding its campaign to be a "combined campaign," or one that includes additional federations, which are "umbrella" organizations that have multiple independent, charitable agencies who all work on a specific area of focus as members.

The Finance Committee directed staff to gather further background information about a combined campaign, which was shared with City Council at its October 25, 2011, meeting. At that meeting, City Council directed staff to work with representatives from the United Way of Asheville & Buncombe County and EarthShare North Carolina to develop a mutually acceptable proposal for a combined campaign at the City of Asheville.

Representatives from the United Way of Asheville & Buncombe County and EarthShare North Carolina presented a combined campaign proposal to the City Council Finance Committee at its January 24, 2012, meeting. While these agencies worked together to develop the proposal, it was presented to the Finance Committee with reservations expressed by the United Way of Asheville & Buncombe County.

The Finance Committee directed staff to bring the proposal and a revised Standard Operating Procedure forward for full City Council consideration. Staff has drafted a standard procedure that is consistent with the proposal that was submitted.

The biggest change in the criteria from our current policy to what is proposed is that all of the agencies participating in Federation must have offices in Asheville and Buncombe County and provide services that benefit the people of Asheville and Buncombe County. What is being proposed is that the criteria be changed so that half of the agencies in the Federation have an office in the local area and that they all provide services that benefit the local area or have some tangible impact on the quality of life in Asheville and Buncombe County.

In 2010 City employees gave about $75,000 through the charitable campaign through the United Way.

If City Council is interested in implementing a combined campaign, staff is seeking a motion to accept the combined campaign proposal and approve the standard operating procedure. The proposal requests that the United Way of Asheville and Buncombe County be named as the campaign administrator. Applications to participate in the campaign would be taken in July, and the campaign would take place at the end of calendar year 2012 for payroll deductions in calendar year 2013.

The City of Asheville's charitable giving campaign supports its strategic goals to be an "employer of choice" that encourages a stronger, more prosperous community.

Pro:

- Expands charitable giving campaign to include additional federations, providing a formalized mechanism for City employees to consider giving to a wider range of charitable organizations.

Cons:

- Concerns have been expressed that a combined campaign may decrease overall giving to the United Way of Asheville and Buncombe County agencies.
- Proposal does not address how other Federations might be added in the future. Staff anticipates requests from additional Federations, which would require changing the proposed criteria.
- There is uncertainty about employee participation and giving results in a combined campaign. There is a 10% minimum participation requirement in the standard operating procedure.

Staff recommends City Council consider a motion to accept the combined campaign proposal and approve the standard operating procedure for a combined campaign. If approved, staff further recommends that results from the first year of the combined campaign be reviewed by City Council in early 2013.

Councilman Hunt, member of the Finance Committee, said that he voted to advance this to the full Council to be considered. He said there has been a tremendous amount of high quality input from both sides on this issue, and personally he has been involved with both environmental and United Way agencies. After hearing all the input, he did not feel there was enough support by Council to change the existing policy. One piece of information he received is that through the election by City employees, any individual employee can elect to have their payroll deduction donation made to any non-profit 501 (c) (3) charity. Therefore, the employees have the opportunity to support local environmental organizations. Staff at United Way has expressed their willingness to be open and allow for those contributions to flow through the existing mechanism.

Councilman Bothwell also reviewed all the input from both sides of the issue as well. Some say there is a limited pool of donations available from City employees and that if they are given other options, they will divert their money elsewhere and reduce giving to the United Way. He noted that employees don't have to participate in a planned giving payroll deduction program as there are many other opportunities to give directly to an organization. Therefore, he didn't see the inclusion of EarthShare doing any appreciable harm to United Way. He also felt offering more options to the employees would actually increase giving generally.

Councilman Bothwell moved to approve the standard operating procedure for a combined campaign and re-evaluate the policy after one year. This motion died for lack of a second.

At this time, Mayor Bellamy re-entered the meeting and continued to preside over the meeting.

**B. RESOLUTION NO. 12-37 - RESOLUTION TO ELIMINATE CORPORATE PERSONHOOD**

The resolution to eliminate corporate personhood reads as follows: "Whereas, natural human beings are entitled to citizenship and the rights, privileges, and benefits thereof; and Whereas, corporations, while generally constructive and providing important benefits, are not human beings, but "artificial immortal beings," as defined by Chief Justice John Marshall; and Whereas, the 2010 Supreme Court decision, Citizens United v. the Federal Election Commission, declared corporations to be persons and eliminated legal limits on corporate political spending; and Whereas, corporate money may be spent limitlessly to influence elections at the federal, congressional, state, county, and municipal levels thereby diluting the power of the people; and Whereas, the United States Constitution has been amended many times in response to a groundswell of public opinion, it is the responsibility of local representatives to give voice to the concerns of its citizenry and advise Congressional representatives of these concerns; and Whereas, a growing number of people and municipalities across the nation have joined together to call for an Amendment to the United States Constitution to abolish corporate personhood. NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: On behalf of the citizens of our municipality, calls on our elected representatives in the United States Congress to initiate the process to amend the Constitution of the United States to abolish corporate personhood; BE IT FURTHER RESOLVED THAT: The City of Asheville calls on other communities and jurisdictions to join with us in this action by passing similar Resolutions."

Councilman Smith said that the groups Move to Amend and Asheville Growing Business Alliance asked him to move forward the resolution to eliminate corporate personhood. He said that one of Council's responsibilities is to protect electoral integrity and to make sure that the electoral process and your vote counts. We have seen that there have been different legislative pieces that have sought to restrict voting rights and restrict voting choices. He was proud to say that here in Asheville we voted to retain early voting, which is one way to maximize access to the ballot. Currently there is a movement underway to amend the US Constitution, in the light of the Citizens United ruling which allows for unlimited corporate donations, that don't have to be disclosed, to campaigns. The effect is already being seen in some of the bigger races. It's his fear that eventually we will end up facing some of the same issues here at our local level. He felt it was important for City Council to take a stand as far as our values as a City regarding electoral integrity and maximum transparency in the electoral process.

The following individuals spoke in support of the resolution eliminating corporate personhood; rejecting the US Supreme Court's ruling in Citizens United that corporations are people; and move to amend our US Constitution to firmly establish that money is not speech and that human beings, not corporations, are persons entitled to constitutional rights:

Ms. Anne Craig, representing Move to Amend Buncombe County and the Meet, Talk, Act

Non-Violent Infinity Group of Occupy Asheville, presented Council with petitions containing approximately 233 signatures, a CD with the signatures, and a valentine
Mr. Curry First, member of the Meet, Talk, Act Non-Violent Infinity Group of Occupy Asheville
Mr. Alan Ditmore
Mr. Victor Ochoa, Occupy Asheville participant
An Occupy San Francisco and Occupy Oakland participant
Mr. John Penley, Occupy Wall Street participant
Ms. Kendall Hale, member of the Meet, Talk, Act Non-Violent Infinity Group of Occupy Asheville
Ms. Cathy Scott, member of the Meet, Talk, Act Non-Violent Infinity Group of Occupy Asheville

Mayor Bellamy said that she would send the petitions to Representative Donna Edwards who is leading the effort to draft the amendment to the US Constitution.

Mr. Rod Hudgins, President of the Council of Independent Business Owners, said that he did not oppose or endorse the resolution. However, "in this national occupy process, corporations, at time, have been villanized. I am here to speak on behalf of their positive contribution to our community. Since October 2010, corporations that are located here have added almost 1500 new jobs and they have invested almost 351 million dollars in the community. We find this good news astonishing especially during this time of economic stress. These corporations hire local citizens, pay excellent wages, provide great benefits, give financial contributions to support local charities, and they encourage their employees to volunteer in all kinds of community activities – even the pint of blood that one of us here may need someday could come from these companies' participation in a Red Cross blood drive. This valuable list could go on and on. For local businesses, these corporations mean the acquisition of homes, the building of facilities, the opportunity to provide services and products, the patronage of local restaurants, the addition of employees, the opportunity to expand, and a future. As you all know, you are not only Asheville City Council members, you are also sitting as the Board of Directors of one of the largest corporations in the region. We appreciate your corporation along with all the other corporations both large and small. Corporations are vital to our continued success and sustainability. We need them and we need to create a positive environment for their growth and prosperity."

Councilman Bothwell gave a brief history of the Citizens United decision, noting it is not something new in the larger sense. This is now the latest and most abusive use of the law in that regard.

Councilman Bothwell moved for the adoption of Resolution No. 12-37 to eliminate corporate personhood. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 269**

**RESOLUTION NO. 12-38 - RESOLUTION DESIGNATING PACK SQUARE AND CITY-COUNCIL PLAZA AS CITY PARKS, AND DESIGNATING CERTAIN AREAS AS PUBLIC FORUM PURPOSES**

**ORDINANCE NO. 4057 - ORDINANCE REGULATING CERTAIN USES OF CITY PROPERTY**

City Attorney Oast said that following up on Council's discussion at the January 24 City Council meeting, the resolution and ordinance are submitted for Council's consideration regarding Pack Square and City-County Plaza.

1. Resolution Designating Park Property. Pursuant to City Code Sec. 12-27, City parks are defined in the City Code to include areas designated by the City Council. The resolution designates substantially all of the area known as Pack Square and City-County Plaza as park property. The area's use as a park is long-standing and may predate Sec. 12-27, and no previous action by Council was found making this designation. The designation makes clear the areas that are considered park property, to which the City's park regulations and ordinances, including the closing time, would apply. With the recent completion of the renovations to the park, consideration of this designation is appropriate at this time.

The resolution also designates two areas - - the western extremity of the Vance Monument oval and the area immediately in front of the City Building - - as public forums. The effect of this is to recognize as public forums two areas that would likely be recognized by courts as having acquired that status through custom and usage. Parts of those public forum areas are encompassed within the designated park. These are areas to which the closing time applicable to parks would not apply. However, even though the public forum areas would be available for use on a 24 hour basis, if the ordinance prohibiting camping on City property is adopted, camping in those public forum areas would not be allowed.

2. Ordinance Regulating Camping and Other Uses of City Property. The ordinance prohibits camping on all City property, not just parks property. The ordinance contains relevant definitions, including "camping," "tent," and "City property." The definition of camping is drawn from federal regulations upheld by the U.S. Supreme Court and, more recently, state regulations upheld by the federal district court for South Carolina, and we have reviewed the ordinances of other cities around North Carolina, including the recently adopted Charlotte ordinances. Note that sleeping (not associated with camping) is regulated pursuant to another section of the City Code Sec. 11-16, adopted in 2002. This ordinance formalizes an existing Parks Department policy that permits will not be issued for camping in City Parks.

The resolution and ordinance are changed from the resolution ad ordinance presented on January 24 in the following significant ways:

(a) The part of the resolution establishing a location for camping has been removed, and the area of the public forum in front of the City Building has been reduced.

(b) The part of the ordinance establishing regulations for camping has been removed.

(c) The ordinance now makes a specific reference to the previously adopted ordinance regarding sleeping on public property (City Code Sec. 11-16).

(d) The ordinance provides it will not be enforced during emergency situations when facilities to house the public are not available.

(e) The ordinance prohibiting storage on City property does not apply to offices and other spaces assigned to employees.

(f) The effective date of both the resolution and ordinance is Friday, February 17, 2012, at noon.

Mayor Bellamy said that public comment will be combined for the purpose of both the resolution and the ordinance.

The following individuals spoke in opposition of the resolution designing certain areas as City parks and the ordinance regulating use of City property for various reasons, some being, but are not limited to: just because the City has the right to regulate Occupy Asheville participants doesn't mean it's the right thing to do; the people have a right to free speech, freedom of

assembly and their ability to redress the government with their grievances when something needs to be changed in their communities; need to give the homeless a safe haven; we should not criminalize poverty and people who have fallen below the standard of living that most of us enjoy; the homeless will be arrested just trying to survive; not all homeless programs are accessible to the homeless and there are many homeless needs that are not met; even if Asheville moves the Occupy movement from in front of City Hall, the movement wouldn't exist if there wasn't something wrong in our communities; the homeless, inequities and activities of our corporations will just be moved somewhere else; request council to offer Occupy Asheville another space where they can organize; and Occupy Asheville does not want to be a burden but wants critical issues addressed; and if Council closes the encampment many homeless will be without a place to live:

Ms. Naomi Archer
An Occupy Asheville participant
Mr. John Spitzberg, President for Veterans for Peace and the Secretary/Treasurer of the Asheville Homeless Network
A man who identified himself as Dan
Brother Christopher Chiaronmonte
Ms. Clara Harahan
An Asheville resident
Ms. Faith Ryan, Asheville resident
Mr. Steve Norris
Ms. Amber Williams
Mr. Victor Ochoa, Occupy Asheville participant
Mr. Don Lilenfeld

Mr. George Ingle felt it was time for the Occupy Asheville to move on. He was opposed with them telling the City what to do and asking the City to find them a place to live. His patience has run out, as well as other Asheville residents' patience. As a City resident for 83 years and a taxpayer, he felt City Council should be representing him and not those who come here from other states to participate in the Occupy Asheville movement.

When Mayor Bellamy asked if Council would like to extend the time period for additional comments, no motion was made.

Councilman Smith could not support the motion as he still had a lot of uncertainty about whether this is speech we are doing away with and he didn't know the answer. He did know that in regard to the homeless, we have reduced chronic homeless in Asheville by 75% over the last 5 years. As far as working together with Occupy Asheville, the City works with hundreds of organizations who deal with deep rooted problems in our community – we have a model for working together. The organization would create a viable model, gain broad-based support and then move it forward with that support.

Councilman Hunt urged members of the Occupy Asheville camp to help the homeless adjust before the Friday deadline. He also hoped that the camp would move without a confrontation.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and ordinance and they would not be read.

Vice-Mayor Manheimer moved for the adoption of Resolution No. 12-38. This motion was seconded by Councilman Bothwell and carried on a 6-1 vote, with Councilman Smith voting "no."

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Councilman Bothwell was opposed to the ordinance regulating camping and other uses on City property because being able to camp around in the City in places is an essential "release valve" for the fact that we don't have sufficient facilities for everyone.

Vice-Mayor Manheimer moved for the adoption of Ordinance No. 4057. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Councilman Bothwell and Councilman Smith voting "no."

**ORDINANCE BOOK NO. 27 – PAGE 281**

**Closed Session**

At 7:20 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including possible litigation, and to consider and give instructions to the attorney concerning the handling or settlement of a claim involving the following parties: Estate of James David Stroupe and the City of Asheville. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 7:57 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Hunt and carried unanimously.

**A. RESOLUTION NO. 12-39 - RESOLUTION DIRECTING STAFF TO PREPARE A REPORT ON A MUNICIPAL SERVICE DISTRICT FOR DOWNTOWN ASHEVILLE**

**MOTION SETTING A PUBLIC HEARING ON MAY 22, 2012, TO CONSIDER A MUNICIPAL SERVICE DISTRICT FOR DOWNTOWN ASHEVILLE**

Downtown Master Plan Project Manager Sasha Vrtunski said the Downtown Management Subcommittee and an Interim Board of Directors is planning to bring a proposal forward for a Municipal Service District (a Business Improvement District) for downtown Asheville in late spring, 2012. They are asking that City Council give the direction to staff to prepare a report that details the needs, services and boundaries of the district. This direction is required by state statute.

Ms. Susan Griffin, Chair of the Downtown Management Subcommittee and downtown resident, made the presentation. The Subcommittee was charged with implementing Strategy 7 of the Downtown Master Plan. They have been studying how the Municipal Service District would be a good management tool for downtown. To avoid confusion, she explained that a Business Improvement District in North Carolina is called a Municipal Service District (MSD).

For the past six months they have been sharing what they have learned about MSDs with downtown property owners and have been encouraged by the support they have been getting as well as receiving encouragement from the positive economic forecast study they had commissioned about the impact of a MSD. Over the past 6 weeks they have been working with the Interim Board who are actually working to finalize the details of what a MSD downtown would look like, e.g. what the actual district would be, the services to be offered, what the Board would look like and what the assessment would be. The interim Board is made up of 13 property owners who would also be paying the additional tax if a MSD is formed. They proportionately represent the different types of property owners within the Central Business District.

The Downtown Management Subcommittee and the interim Board asked for Council to adopt a resolution directing staff to prepare a report for an MSD for downtown Asheville and to also adopt a motion setting a public hearing on an MSD for downtown Asheville on March 22, 2012.

In response to Vice-Mayor Manheimer, City Attorney Oast believed there is no statutory requirement that the proposed ordinance go through any other body other than City Council.

Councilman Davis said that there is a feeling amongst many downtown businesses that there would need to be a significant buy-in from the business community. He suggested that once this takes real shape, it should be reviewed again by the Planning & Economic Development Committee and the Downtown Commission. He wondered if it would be something we should add to a ballot for a referendum.

Ms. Griffin said that once the details are finalized, which they expect will be completed in the next two weeks, they will go back to the property owners and whatever other bodies the Council would like them to receive further input.

Councilman Hunt agreed with Councilman Davis on the need to be assured that an MSD downtown is broadly supported. He felt the burden needs to be on the advocates making sure the MSD is defensible and well executed.

Councilman Davis said that this will be a considerable amount of money and a considerable change to an important district.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 12-39, with the proposed ordinance being reviewed by the Planning & Economic Development Committee prior to review by the Downtown Commission before the May 22 public hearing. This motion was seconded by Councilman Hunt and carried unanimously.

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Vice-Mayor Manheimer moved to schedule a public hearing on May 22, 2012, to consider a Municipal Service District for downtown Asheville. This motion was seconded by Councilman Smith and carried unanimously.

At 8:05 p.m., Councilman Smith moved to excuse Mayor Bellamy from the remainder of the meeting. This motion was seconded by Councilman Davis and carried unanimously. At this time, Mayor Bellamy handed the gavel over to Vice-Mayor Manheimer to preside over the remainder of the meeting.

**B. ORDINANCE NO. 4058 - ORDINANCE ADOPTING THE 2012-13 FEES & CHARGES**

Budget Manager Tony McDowell said that this is the consideration of an ordinance adopting fee adjustments for the Fiscal Year 2012-2013.

The major types of revenue available to North Carolina counties and municipalities are local taxes (including property taxes); local fees, charges and assessments; and intergovernmental and miscellaneous revenue. Local governments have increasingly looked for appropriate opportunities to implement local fees and charges because they generally have the

advantage of aligning service provision directly with payment; therefore, the person or entity receiving the benefit of a service pays for the service.

In Asheville, these fees make up about 10% of the City's General Fund revenue and 36% of city-wide revenue. These fees generally fall into three major categories: general user fees and charges; regulatory fees, and; public enterprise fees and charges.

- **General User Fees & Charges:** User fees are available feasible for any service that directly benefits individual users and generally are placed in the General Fund to support any general fund activity or program. User fees typically only cover a portion of the cost of the services for which they are assessed. Charges for parks and recreation services would fall into this category.
- **Regulatory Fees:** Regulatory fees cover costs associated with certain regulatory activities such as issuing building permits, performing inspections, reviewing development plans, and enforcing local ordinances. Case law requires regulatory fees to be reasonable and prohibits them from exceeding the average costs of funding the regulatory service.
- **Public Enterprise Fees & Charges:** A public enterprise is an activity of a commercial nature that could be provided by the private sector (water, sewer, electric service, solid waste collection and disposal, stormwater, airports, off-street parking, public transportation, etc.). Many public enterprises are self-supporting, meaning revenue generated from fees and charges is sufficient to cover the cost of providing the service.

Staff recommendations for adjustments to fees and charges for FY 2012-13 consist of relatively minor increases to regulatory fees that either have not been adjusted in three or more years or have never been assessed for a specific service.

In the Public Enterprise category, staff is setting fees for the new Biltmore/Lexington Avenue Parking Garage that will be opening in the coming fiscal year. In addition, based on favorable financial performance in the Water Resources Fund last year, staff has concluded that a water rate increase will not be necessary for FY 2012-13.

The proposed FY 2012-13 fee adjustments were reviewed by the City Council Finance Committee on January 24, 2012. He provided Council with a full summary and analysis of the proposed fees and charges, which would take effect on July 1, 2012.

This action complies with the City Council Strategic Operating Plan goal of "Operate the City of Asheville to the highest levels of fiscal responsibility."

Pros:

- Provides additional revenue to help balance the FY 2012-13 General Fund budget.
- Provides staff will time to begin communicating fee changes to citizens, customers and stakeholders so they are aware of changes that will be implemented on July 1.

Con:

- None.

General Fund fee changes recommended by the Finance Committee would produce approximately $160,000 in additional revenue. These fees are designed to more fully recover the expenditures associated with providing specific services. Establishment of the Biltmore/Lexington Avenue Parking Garage fees will provide revenue to help offset the cost of operating the garage and paying the debt service on its construction.

Staff recommends that Council adopt the proposed FY 2012-13 fee proposals.

Councilman Smith understood that we are trying to keep up with the cost of doing business; however, he asked that the home occupation permit fee (current $50 fee; proposed $75 fee); and the A-Frame Sign fee (currently $25 fee; proposed $30 fee) not be increased. Both of these fees affect small and emerging businesses and asked that those fees not be increased.

Discussion occurred, upon inquiry of Councilman Davis, about studying parking garage rates in other comparable cities. Director of Transportation Ken Putnam said that they are trying to keep on-street metered parking higher than the rates in the parking garages to entice people to park in the garages. In summary, it was the consensus of Council to ask the City Manager to begin the study and report back to Council with staff's findings. Councilman Davis felt that the Downtown Commission and the Asheville Downtown Association will want to provide input into the study as well, due to their disadvantage of other areas of the City not having on-street parking meters, i.e., Biltmore Village, Biltmore Park, Haywood Road in west Asheville, etc. Vice-Mayor Manheimer also felt it might be worthwhile to look at placing on-street parking meters in the other areas of the City, which enforcement could be recoverable through the fees collected.

In response to Councilman Smith, Mr. Putnam said that in addition to the pay-by-space stations, staff is currently pursuing the idea of credit cards for on-street meters.

Vice-Mayor Manheimer said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith moved for the adoption of Ordinance No. 4058 with the amendment that the home occupation permit fee remain $50 and the A-Frame Sign fee remain $25. This motion was seconded by Councilman Hunt and carried unanimously (Mayor Bellamy was excused).

**ORDINANCE BOOK NO. 27 – PAGE 284**

**C. BOARDS & COMMISSIONS**

Regarding the Alcoholic Beverage Control Board, the following individuals have applied for the vacancy: Genny Lynn Beville, Tim Flora, Mark W. Cates, Guadalupe Chavarria, Randall C. Hall, Judy Kuhne, Fred Cooke, Charles Larrick, Melissa English and John Menkes. It was the Boards & Commissions Committee recommendation and the consensus of Council to interview Guadalupe Chavarria, Randall C. Hall, Melissa English and John Menkes.

Regarding the Board of Adjustment, the following individual has applied for the vacancy: Dimi Kulakov. Because there are two alternate openings and one applicant, it was the consensus of Council to re-advertise.

Regarding the Community Relations Council, the following individuals have applied for a vacancy: Charles Rosenblum, Kathryn Liss, Itiyopiya Ewart, and Christopher Bradford. It was the recommendation of the Boards & Commissions Committee and the consensus of Council to (1) postpone any appointments until after the Community Relations Council has made a presentation to City Council in March; and (2) re-advertise.

Regarding the Historic Resources Commission, the following individuals have applied for a vacancy: Jay Lively, Jay Marino, Anne Harrell, Frank Hallstrom, Deanna Reeder, Michael Bragg and Tracey Rizzo. It was the recommendation of the Boards & Commissions Committee and consensus of Council to interview Jay Lively, Tracey Rizzo and Deanna Reeder.

**RESOLUTION NO. 12-40 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that former Vice-Mayor Brownie Newman currently serves as a member on the Airport Authority.

Vice-Mayor Manheimer said that it has been the practice of Council to appoint a seated member of Council to the Airport Authority.

The following individual has applied for a vacancy on the Airport Authority: Heather Hunter.

Councilman Hunt moved to appoint Vice-Mayor Esther Manheimer to fill the unexpired term of Brownie Newman, term to expire June 30, 2012, or until her successor has been appointed. This motion was seconded by Councilman Smith and carried unanimously (Mayor Bellamy excused from meeting).

**RESOLUTION BOOK NO. 34 – PAGE 273**

**RESOLUTION NO. 12-41 - RESOLUTION APPOINTING A CHAIR TO THE CIVIL SERVICE BOARD**

Vice-Mayor Manheimer said that Larry Harris currently serves as Chairman of the Civil Service Board. The Civil Service Law for the City of Asheville, Section 2, Chapter 303 of the 1999 Session Laws of the North Carolina General Assembly provides that the Chair of the Civil Service Board shall be appointed annually by the City Council.

Current members of the Civil Service Board include: Chairman Larry Harris, Jacquelyn Hallum, Alan Coxie, Virginia Robinson and Marvin Rosen.

Upon inquiry of Vice-Mayor Manheimer, City Attorney Oast said that Councilwoman Manheimer did not have a disqualifying conflict of interest just because Mr. Harris works at the same law firm.

Councilman Hunt moved to reappoint Larry C. Harris Jr. as Chair of the Civil Service Board for a one-year term or until his successor is duly and annually appointed by the City Council, as provided by law. This motion was seconded by Councilman Davis and carried unanimously (Mayor Bellamy excused from meeting).

**RESOLUTION BOOK NO. 32 – PAGE 274**

**RESOLUTION NO. 12-42 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE DOWNTOWN COMMISSION**

Vice-Mayor Manheimer said that the term of Kitty Love, as a member on the Asheville Downtown Commission, expired on December 31, 2011.

The following individuals have applied for a vacancy on the Downtown Commission: Edward Loewe, Patric Mullen, Karl Katterjohn, Dean Pistor, Andrew Montrie, Byron Greiner and Laurie Miller.

Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended appointing Byron Greiner, but would be open to any interviews suggested by Council.

Councilman Davis moved to appoint Byron Greiner to serve a three-year term, term to expire December 31, 2014, or until his successor has been appointed. This motion was seconded by Councilman Pelly and carried unanimously (Mayor Bellamy excused from meeting).

Vice-Mayor Manheimer also noted that the Boards & Commissions Committee reviewed the recommendation of the Asheville Downtown Association (ADA). Said recommendation was to amend the Downtown Commission's ordinance to allow their seat be a seated Board member and not specifically the President of the ADA. The Asheville Downtown Commission supports this amendment as well. It was the consensus of Council to instruct the City Attorney to prepare an ordinance for the next meeting to make this change in membership.

**RESOLUTION BOOK NO. 34 – PAGE 275**

**RESOLUTION NO. 12-43 - RESOLUTION APPOINTING A MEMBER TO THE HOMELESS INITIATIVE ADVISORY COMMITTEE**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that the terms of Stephen Bolden and Wanda Lanier expired on November 1, 2011. There also exists a vacancy from the passing of Gerald Hixson, whose term will expire on November 1, 2013.

The following individuals have applied for the vacancies: Debbie Metcalf, Micheal Woods, Michael Akers, Marcie Walker, Timothy Sadler, John Spears and Charles Barber.

The Homeless Initiative Advisory Committee (HIAC) recommended appointing Tim Sadler to fill the unexpired term of Mr. Hixson and appointing Marcie Walker. They asked that the remaining seat be re-advertised. There was a brief discussion on whether City Council is required to appoint the HIAC's recommendations. Councilman Smith, liaison to the HIAC, will confer with the HIAC to see what their understanding is regarding recommendations for appointments; and if need be, the resolution establishing the HIAC will be amended to give Council the discretion on making appointments, with consideration of their recommendation. It was the consensus of Council to continue advertising.

Councilman Smith moved to appoint Marcie Walker to serve a three-year term, term to expire November 1, 2014, or until her successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously (Mayor Bellamy excused from meeting).

**RESOLUTION BOOK NO. 34 – PAGE 276**

**RESOLUTION NO. 12-44 - RESOLUTION APPOINTING A MEMBER TO THE HUB COMMUNITY ECONOMIC DEVELOPMENT ALLIANCE**

Vice-Mayor Manheimer, Chairman of the Boards & Commissions Committee, said that there currently exists a vacancy on the HUB Community Economic Development Alliance, left by Kim MacQueen. The term will expire August 22, 2012.

The following individual has applied for a vacancy on the HUB Community Economic Development Alliance: Edward Hay.

Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended appointing Edward Hay..

Councilman Bothwell moved to appoint Edward Hay to serve the unexpired term of Ms. MacQueen, term to expire August 22, 2012, and then a full three-year term, term to expire August 22, 2015, or until his successor has been appointed. This motion was seconded by Councilman Hunt and carried unanimously (Mayor Bellamy excused from meeting).

**RESOLUTION BOOK NO. 34 – PAGE 277**

**RESOLUTION NO. 12-45 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE RIVERFRONT AREA REDEVELOPMENT COMMISSION**

Vice-Mayor Manheimer, Chairman of the Boards & Commissions Committee, said that there currently exists a vacancy on the Riverfront Area Redevelopment Commission, left by Mr. Robert Camille. The term will expire January 1, 2014.

The following individuals have applied for a vacancy on the Riverfront Area Redevelopment Commission: Phillip Ellis and Cindy Weeks.

Vice-Mayor Manheimer said that Riverfront Area Redevelopment Commission recommended appointing Ms. Cindy Weeks and the Boards & Commissions Committee agreed with their recommendation.

Councilman Hunt moved to appoint Cindy Weeks to serve the unexpired term of Mr. Camille, term to expire January 1, 2014, or until her successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously (Mayor Bellamy excused from meeting).

**RESOLUTION BOOK NO. 34 – PAGE 278**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Brother Christopher Chiaronmonte spoke about how Asheville treats the homeless.

Mr. Charles Rawls spoke about his disappointment in Asheville's decision to designate the area around Pack Square Park as a Park.

**VIII. ADJOURNMENT:**

Vice-Mayor Manheimer adjourned the meeting at 8:44 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – February 28, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Davis gave the invocation.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 14, 2012**

**B. RESOLUTION NO. 12-46 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR THE FISCAL YEAR 2012-13 URBAN ADVANCTED TECHNOLOGY GRANT, AND IF APPROVED, TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT OF TRANSPORTATION FOR SAID GRANT**

Summary: The consideration of a resolution authorizing the City Manager to apply for the FY 2012-13 Urban Advanced Technology Grant, and if approved, to enter into an agreement with the N.C. Dept. of Transportation (NCDOT), Public Transportation Division and executing all the documents related to the subject grant.

The NCDOT released the FY 2012-13 Urban Advanced Technology Grant application package during December 2011 to all North Carolina Urban and Regional Transit Systems. The focus areas of the grant include vehicle safety and security, completion of existing projects, and integration of fixed route automatic vehicle location (AVL) data with the 511 traveler information system. The total current funds available for the grant are $1.7 million and funding for the approved projects would be available July 1, 2012.

Staff would like to pursue the subject grant to be able to procure an automated vehicle location (AVL) system that focuses on real time passenger information. The system would produce operational information in real time including vehicle location, speed, fuel usage, on-time performance, and historical records. This information would be a powerful tool to help staff manage the overall transit system and to identify areas needing improvement. It would also enhance the customer experience by providing next bus arrival information in real time, via personal cell phones, Smartphones, and through the system's website. This type of technology is identified in the Transit Master Plan capital investment scenario as a vital project to improve the system's operation in the short-term.

The total estimated cost for the subject project is about $450,000. The grant would provide 90% of the funds ($405,000) and the City would provide the remaining 10% ($45,000) as the local match. The local match is already programmed in the Transit Enterprise Fund Capital Improvement Program in a project identified as T1202. Staff has been pursuing Federal grants for the subject project and this grant opportunity enables staff to leverage other funding sources.

This action complies with the current City Council 2011-12 Strategic Operating Plan within the multi-modal transportation and fiscal responsibility areas by funding system improvements that are in the long-term Capital Improvement Program and exploring alternatives for enhancing the city's long-term financial commitment to master plan implementation.

The Transit Commission supports the subject action.

Pros:

- Satisfies one of the recommendations in the approved Transit Master Plan.
- The AVL system would improve the transit system's overall efficiency and it would enhance the customer experience.
- The grant would fund up to 90% of the total project cost.
- The City's local match is already budgeted.

Con:

- The 10% local match equates to $45,000.

The total estimated project cost is $450,000. The local match would be $45,000 and it is currently budgeted in the Transit Enterprise Fund Capital Improvement Program in a project identified as T1202.

City staff recommends that City Council adopt a resolution authorizing the City Manager to apply for the FY 2012-13 Urban Advanced Technology Grant, and if approved, to enter into an agreement with the N.C. Dept. of Transportation, Public Transportation Division and executing all the documents related to the subject grant.

Councilman Smith spoke in support of this grant for a more informed ridership.

**RESOLUTION BOOK NO. 34 – PAGE 279**

**C. RESOLUTION NO. 12-47 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH T & K UTILITIES INC. FOR THE PROJECT KNOWN AS SARDIS ROAD ANNEXATION AREA SEWER SYSTEM IMPROVEMENTS**

Summary: The consideration of a resolution authorizing the City Manager to execute a contract in the amount of $599,610 plus a contingency of 20% ($120,000) with T & K Utilities, Inc. for the project known as Sardis Road Annexation Area Sewer System Improvements, City of Asheville Project # SC-08-09-001.

City Council had approved the Annexation Services Plan for the Sardis Road area on May 22, 2007, which indicates that approximately 6,800 linear feet of 8 inch sewer line be installed to bring the service to substantially the same level as other parts of the City. The project was advertised and on February 15, 2012, bids were opened with T & K Utilities, Inc., a local company, being the lowest responsible bidder with a bid of $599,610. This was well below the Engineer's Estimate of $757,800 and below the $1,400,000 construction budget set aside for the project. A 20% contingency ($120,000) has been added to allow payment for any unforeseen costs that typically arise during construction. The work produced from contract would help to fulfill the City's obligation as outlined in the 2007 Annexation Services Plan for the Sardis Road area.

This action complies with the City Council Strategic Operating Plan in that it will enhance the infrastructure within our municipal limits, and fulfill the City's obligation outlined in the 2007 annexation of the Sardis Road area.

Pros:

- Will allow for the construction of approximately 6,800 linear feet of new sanitary sewer within the Asheville City limits.
- Will fulfill the City's obligation of the 2007 annexation of the Sardis Road area.
- Will be the first project to receive funds from MSD's new Revenue Sharing program.
- Once turned over to MSD, the City will not be responsible for future maintenance of the sanitary sewer system.

Con:

- The project will cost the City approximately $600,000.

This project will cost approximately $600,000. The budget for this project is already included in the City's adopted Capital Improvement Program. Once the sewer system improvements are completed, MSD's Revenue Sharing Program should provide the City with 50% of all collected fees from the use of this sewer system for the next ten years.

City staff recommends City Council adopt the attached resolution awarding the contract to T & K Utilities, Inc. and authorizing the City Manager to execute on behalf of the City of Asheville a contract in the amount of $599,610 plus a contingency of 20% ($120,000) with T & K Utilities, Inc. for the project known as Sardis Road Annexation Area Sewer System Improvements, City of Asheville Project # SC-08-09-001.

**RESOLUTION BOOK NO. 34 – PAGE 280**

**D. ORDINANCE NO. 4059 - ORDINANCE AMENDING THE MEMBERSHIP OF THE ASHEVILLE DOWNTOWN COMMISSON**

Summary: The consideration of an amendment to the City Code regarding membership on Downtown Commission.

City Code Sec. 2-76 establishes the Downtown Commission, and provides for the appointment of members and allocation of seats. One of the seats is allocated to "The president of the Asheville Downtown Association." Sec. 2-76(b)(4).

In response to a recent request, the attached amendment provides that the seat allocated to the Downtown Association may be filled by "a member of the Board of Directors" of the Association.

This action supports Downtown Commission, and relationship with external organizations.

Pros:

- Provides for greater flexibility in filling a seat on an important board.
- Facilitates functioning of Downtown Commission.

Con:

- None noted.

Adoption of the ordinance is recommended.

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ORDINANCE BOOK NO. 27 - PAGE 307

**E. RESOLUTION NO. 12-48 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY REGARDING RECOMBINATION OF COURTHOUSE PROPERTY**

Summary: The consideration of a resolution authorizing execution of an agreement with Buncombe County regarding the Courthouse property.

As Council knows, Buncombe County is undertaking a major renovation of the Buncombe County Courthouse. The project spans several separate parcels of land. Applicable codes (building safety and zoning) contemplate that buildings will occupy a single lot, and will not cross property lines. Usually, recombination of separate lots into one is the most efficient way to address this issue, and is little trouble for the owner/developer.

In this case, however, the parcels have historically been used for separate purposes, and the County has pledged them as security for different public financing issuances. For this reason, recombination in the usual sense would be difficult. We have worked out an agreement with the County wherein the County agrees not to transfer or sell any of the parcels for as long as the Courthouse remains on them. Out-conveyance of any of the parcels is a practical impossibility in any event. This has been reviewed by the Building Safety and Planning Departments, and they do not object.

This action supports City Council's Strategic Operating Plan in that it supports major improvements to Courthouse, already approved by Downtown Commission and Council.

Pros:

- Facilitates construction of Courthouse improvements.
- Accomplishes same purpose as complicated recombination.

Cons:

- None noted.

There is no fiscal impact.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 34 – PAGE 281

**F. ORDINANCE NO. 4060 - BUDGET AMENDMENT FROM THE ASHEVILLE PARKS & GREENWAYS FOUNDATION TO SUPPORT THE HANGING FLOWER BASKET PROGRAM**

Summary: The consideration of a budget amendment, in the amount of $2,353, for support of the Hanging Basket program.

The City of Asheville in the Parks, Recreation and Cultural Arts Department has received a contribution from the Asheville Parks and Greenways Foundation to support the Hanging Basket program. Each year, hanging flower baskets are installed in the Downtown Business District which has been supported by the Asheville Parks and Greenways Foundation for several years. The contribution provides funding for approximately 39% of the program cost, and the City provides the remaining 61% in the Parks, Recreation and Cultural Arts Department operating budget.

The Asheville Parks and Greenways Foundation, a 501c3 non-profit charity, is a community group of individuals, businesses and grantors who together support the Asheville Parks, Recreation & Cultural Arts Department with funding to enhance selected programs and capital projects.

The action complies with the City Council 2011-2012 Strategic Plan Goal of fiscal responsibility of exploring alternative for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities. This action also complies with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it increases department funding with alternative funding and ensuring a high level of service in parks and facilities by addressing ongoing maintenance of parks to meet community expectations.

Pro:
- Provides additional funds to support the Hanging Baskets program.

Con:
- None

The total cost of the Hanging Basket program is $6,100, of which this donation of $2,353 will cover approximately 39% of that cost. The remaining $3,747 or approximately 61% of the cost will be funded by the Parks, Recreation and Cultural Arts Department General Fund budget.

City staff recommends City Council to approve the budget amendment authorizing the City Manager to accept the donation from the Asheville Parks and Greenways Foundation in the amount of $2,353 to support the Hanging Basket program.

Mayor Bellamy thanked the Asheville Parks and Greenways Foundation for funding this program.

**ORDINANCE BOOK NO. 27 – PAGE 308**

**G. ORDINANCE NO. 4061 - BUDGET AMENDMENT FOR CIVIC CENTER RENOVATIONS**

Summary: The consideration a budget amendment in the amount of $194,296 to increase the Civic Center renovations project budget with revenue coming from the civic center's fund balance

City Council previously approved various contracts to renovate the Civic Center for the Southern Conference Basketball Tournament. These contracts include a general contractor as well as specialized contractors for the sound system, seating risers, and scoreboard/electronics. The project is substantially on track for completion in accordance with the plans and specifications within the time specified in the contract. However, factors related to existing building conditions such as the height of corridor light fixtures, and the need to include non-structural renovations such as removal of walls for a media area on the exhibition level, have resulted in the need for an increase in some of the original contracts. These change directives and change orders are necessary to insure that the project is completed to the level expected by the SoCon and the funding partners. These changes require approval of a project budget amendment. There is available fund balance in the Civic Center enterprise fund. As noted in the November 2011 budget amendment approval, the Civic Center fund balance exceeded its 16% target amount by $194,296, which has been held in fund balance to meet cash requirements at the Civic Center box office. A review of monthly box office balances by finance department staff indicated that a sufficient cash flow balance has been maintained without the $194,296, thus staff is recommending the transfer to the Project Capital budget. This Civic Center fund balance transfer has no impact on General Fund balance.

This action complies with the City Council Strategic Operating Plan's Fiscal Responsibility goal of developing strategic partnerships to leverage resources for infrastructure and CIP projects. This action also complies with the Civic Center Commission Master Plan that encourages continuing renovations for the facility, and supports the goal of developing new partnerships. This request supports Council's strategic plan allowing for timely renovations to the Civic Center for the Southern Conference.

This action has been reviewed and recommended by the Civic Center Commission.

Pros:

- Allows for timely renovations to the Civic Center for the Southern Conference Basketball Tournament.

Con:

- None.

The budget amendment will increase the total Civic Center renovation project budget by $194,296, to a total of $7,526,296. As noted above, the Civic Center will maintain its target 16% fund balance, and this budget amendment has no impact on the General Fund balance. It also has a positive effect of allowing current equity to be utilized on the project.

Staff recommends City Council authorize a budget amendment in the amount of $194,296 to increase the Civic Center renovations project budget with revenue coming from Civic Center box office fund balance.

**ORDINANCE BOOK NO. 27 - PAGE 310**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Smith moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. UPDATE ON THE RECYCLING SERVICE UPGRADES

Energy Coordinator Maggie Ullman provided Council with the Recycling Program update. Council's objective is to implement ways to reduce city-wide solid waste. She explained the pilot program that ran through September-November 2010 of the big blue roll carts piloted in four neighborhoods: Burton Street, Park Avenue, Norwood and Parkway Forest. Out of the 721 households in the pilot, the average increase in diversion was 54%. Ninety-three percent of respondents surveyed "agreed or strongly agree the new recycling service with a roll cart is more convenient than the old program." In the spring of 2011, City Council decided to expand the pilot city-wide. Zero Waste AVL's goals are (1) to upgrade recycling service to make it easier to recycle more; (2) to increase community education to reduce, reuse and recycle; and (3) to lead by example through collecting brush and leaf collection for composting.

When staff begins the cart delivery on March 5 through March 30, there will be (1) no sorting required; (2) cleaner collection – no more overflowing materials; and (3) no heavy lifting, simply roll cart to curbside.

New materials collected will be all plastics #1 through #7; milks and OJ cartons; juice

The top ten items not accepted in Big Blue is plastic bags, paper towels, aluminum foil, black microwaveable trays, frying pans/pots, hard cover books, Styrofoam/packing peanuts, dishes, motor oil bottles, and metal items that are not cans.

She then outlined the next steps (1) March 5 – launch event in West Asheville Park at 10:00 a.m.; (2) March 5-30 – carts delivered city-wide; (3) research expansion options for downtown recycling, public housing and composting; and (4) early summer 2012 – program performance update.

In response to Mayor Bellamy, Ms. Ullman said that residents can either keep their old carts or put them into Big Blue to be recycled. Residents can begin to recycle the new materials on March 5.

In response to Councilman Pelly, Mayor Bellamy said that because the City does not want to complete with the private market, business owners and commercial properties have the option of contracting with private commercial haulers, as there are several companies that provide that service.

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING TO CONSIDER THE PERMANENT CLOSING OF A PORTION OF SOUTH PACK SQUARE

### RESOLUTION NO. 12-49 - RESOLUTION TO PERMANENTLY CLOSE A PORTION OF SOUTH PACK SQUARE

Director of Public Works Cathy Ball said that this is the consideration of a resolution to permanently close a portion of a right-of-way on College Street. This public hearing was advertised on January 27, February 3, 10 and 17, 2012.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the City of Asheville, being the only abutting property owner desires to permanently close a portion of S. Pack Square. The portion used to serve as the right-of-way for College Street before the roads were re-aligned. Part of this portion of right-of-way is where the new pavilion is being built.

The Greenway Commission met on January 12, 2012, and approved the closure unanimously.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution to permanently close a portion of S. Pack Square.

Mayor Bellamy opened the public hearing at 5:22 p.m. and when no one spoke, she closed the public hearing at 5:22 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Hunt moved for the adoption of Resolution No. 12-49. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 34– PAGE 286**

**B. PUBLIC HEARING TO CONSIDER A PROPOSED AMENDMENT TO THE 2011-12 CONSOLIDATED ACTION PLAN FOR CDBG AND HOME PARTNERSHIP ACT FUNDS TO FUND PARTNERS UNLIMITED INC. FOR THEIR AT-RISK STUDENT PROGRAM**

**RESOLUTION NO. 12-50 - RESOLUTION AMNDING THE 2011-12 CONSOLIDATED ACTION PLAN FOR CDBG AND HOME PARTNERSHIP ACT FUNDS TO FUND PARTNERS UNLIMITED INC. FOR THEIR AT-RISK STUDENT PROGRAM**

Community Development Director Jeff Staudinger said that this is the consideration of a resolution authorizing a substantial amendment to the 2011-2012 Consolidated Annual Action Plan for CDBG and HOME to fund Partners Unlimited, Inc. for their At-Risk Student program in the amount of $11,000. This public hearing was advertised on February 17 and 24, 2012.

Partners Unlimited is a 501(c)(3) non-profit organization that provides academic enhancement services to help keep high school students in school and moving towards graduation. The organization receives about 100 referrals annually from Asheville City and Buncombe County schools. The organization serves suspended students seeking to keep up with school work while serving suspensions, and other students who need to recover lost credits and graduate on time. The organization is based at the Reid Center, and is part of the continuum of education and jobs training services there.

The specific request comes because of a cut in state funding for the Partners Unlimited program. This cut seriously affects the organization's ability to provide its basic service. If their request is granted, Partners Unlimited would use the funds to renew eight NOVA Net site licenses ($9,200), and have their financial records reviewed and 990 annual tax report filed ($1,800). The organization has no prior experience with CDBG funds, and a condition of the proposed funding was that a fiscal agent be identified to insure proper record-keeping and documentation. Green Opportunities has agreed to serve as fiscal agent.

Funding is available from the 2011-2012 CDBG pool. $11,000 was set aside for "fair housing" in the 2011 Action Plan, but no proposal was funded. The City has received fair housing funding from HUD, and can address fair housing needs from that pool. The proposed activity is a public service activity, as was the fair housing activity, so there would be no effect on the public service cap. The request is made out of the normal funding cycle, because of the immediate funding need.

This action complies with City Council's Strategic Goal of "Job Growth and Community Development."

Pro:

- The activity is an eligible activity under the CDBG program rules. This proposed amendment enables the continuation of a public service activity serving primarily low

income persons, and will assist in meeting overall program goals. The funds will also assist the sponsoring organization's viability and ability to meet community needs.

Con:

- There are none.

The proposed amendment uses funds already available through the CDBG and HOME programs. There is no increase in administrative responsibility for the City. No City General Funds are allocated for this program.

Staff agrees with the Housing and Community Development Committee in recommending that Council approve the proposed amendment to the 2011-2012 Consolidated Annual Action Plan.

Mayor Bellamy opened the public hearing at 5:25 p.m., and when no one spoke, she closed the public hearing at 5:25 p.m.

In response to Councilman Bothwell, Mr. Staudinger said that Partners Unlimited has provided a matrix on past performance, noting they do have a record of success.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 12-50. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34– PAGE 287**

**C. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON 36 MONTFORD AVENUE FROM COMMUNITY BUSINESS I DISTRICT TO INSTITUTIONAL DISTRICT/CONDITONAL ZONING TO ALLOW FOR A SATELLITE GRADUATE SCHOOL CAMPUS**

**ORDINANCE NO. 4062 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED ON 36 MONTFORD AVENUE FROM COMMUNITY BUSINESS I DISTRICT TO INSTITUTIONAL DISTRICT/CONDITONAL ZONING TO ALLOW FOR A SATELLITE GRADUATE SCHOOL CAMPUS**

Urban Planner Alan Glines said that this is the consideration of an ordinance to conditionally zone property located on 36 Montford Avenue from Community Business I District to Institutional District/Conditional Zoning to allow for a satellite graduate school campus. This public hearing was advertised on February 17 and 24, 2012.

In 2011, Lenoir-Rhyne University approached the Asheville Area Chamber of Commerce about using the third floor (comprising approximately 9,100 square feet) of the existing Chamber of Commerce Building to allow the University to offer graduate-level classes to the Asheville community. The Chamber is experiencing excess capacity in the building and agreed to sell the space. Lenoir-Rhyne University (LRU) plans to offer classes through a creative mix of on-site, distance/ on-line learning, operating in the evenings and on weekends. The operations plan includes:

- The University estimates that on most evenings up to about 25% of the enrolled students (about 50) are expected to be on campus with fewer students expected during summer sessions.

- Weekday evening classes begin at 5:30 p.m. and end around 8:30 or 9:30 p.m.

- A variety of weekend classes will be offered including Saturdays and Sundays as part of an accelerated course on weekends.

- Occasionally there may be a special seminar or lecture with attendance of 100 or so participants using existing space in the Chamber building.

- Two hundred is the projected student enrollment for at least the first three years of operation but that number could be larger or smaller depending on the interest and growth of the programs offered.

The Chamber of Commerce moved to its current location on Montford Avenue in 2000 after assembling properties on Montford Avenue, Hill Street, and Gudger Street and constructing a new office building and surface parking lot. The building totals about 33,000 square feet on three levels and is oriented to face Montford Avenue.

Because the building site is located within the boundary of the Montford Historic District, the building was reviewed and approved by the Historic Resources Commission when it was built. The all-brick building has a pedestrian orientation from Montford Avenue with windows and door facing the neighborhood.

The building is non-conforming in the CB I zone standards because of its size as buildings in the CB I zone are not allowed to exceed 12,000 square feet (or 6,000 square feet on two floors). This is because when the project was originally constructed, the Head of Montford Overlay applied to the site and this overlay allowed larger structures.

Parking and additional entrances are located at the rear of the building. The site has two access points, one directly from Montford Avenue and the other from Hill Street. There are 146 parking spaces as indicated on the site plans that have accompanied this conditional zoning proposal. According to submitted information the University use of these parking spaces will not overlap the primary daytime use and will not interfere with the recently authorized seasonal Wednesday Farm Market that serves the community in the lower area of this parking lot. The site is fully landscaped and meets the requirements for landscaping found in Article 11 of the UDO.

Existing Zoning: Community Business One (CB I) zone is intended to provide areas for medium density business and service uses serving several residential neighborhoods. The zoning area may serve as a workplace for nearby residents and be sensitive to significant pedestrian activity. Although the list of allowed uses in the CB I district is quite varied, institutional uses like universities are not permitted. Under the existing zoning the building is non-conforming based on scale of the structure which is not a particular concern but worthy of a mention.

Proposed Zoning: Institutional (Inst) zone is intended for the development of major educational, medical and complimentary uses such as support offices and related services. While there are not maximum building size limitations or design related requirements, new construction follows normal review procedures which are dependent on the scale of the project.

The existing site development and building would both be conforming to the proposed Institutional Zone. Changing the zoning to *Institutional Conditional Zone* using the existing site plan and described uses and operation of the site as conditions for approval can protect the character of the community and provide specified limits on the use of the site.

The site is built out and no further site changes are proposed. No changes are proposed to the 146 space parking area located at the rear of the site. The existing 3-story building was built to accommodate a mix of uses, so the addition of the university activities on the third floor will fit well into the existing layout and operation of the building.

The Chamber of Commerce will continue its normal business development and meeting functions and the activities of the Asheville Visitor Center. The Chamber currently has 45 employees staffing both the Chamber operations and the Visitor Center. The Chamber offices are open from 8:00 a.m. until 5:00 p.m. Monday through Friday and the Visitor Center operates from 8:30 a.m. until 5:30 p.m. Monday through Friday. On weekends the Visitor Center hours vary slightly opening at 9:00 a.m. and closing at 5:00 p.m. The Visitor Center has special hours on weekends in October and closes at 7:00 p.m. instead of the usual 5:00 p.m.

Weekend staff coverage at the Visitor Center includes five people (made up of staff and volunteers). Across the year the bulk of the visits to the Visitor Center occur between the hours of 10:00 am and 3:30 pm and the typical visitor stays for 15 minutes. In addition to the described Chamber uses, the seasonal Wednesday Farmer's Market which is popular with the neighborhood and visitors from other parts of the city also plans to stay and use the site. The market operates only on Wednesday afternoons and closes at 6:00 p.m. and generally operates between April and November.

The current uses of the site are most active during the middle parts of the day with visits to the Visitor Center tapering off after 3:30 p.m. which accounts for most of the visitor traffic to the property. There will be a brief time when there will be an overlap with Visitor Center patrons in the evenings after 5:00 p.m. as students arrive for the on-site classes which will start at 5:30 p.m. According to University officials, however, newer delivery methods for graduate-level classes require less 'face-to-face' time in the classroom and it is estimated that no more than 50 students or 25% of the enrolled student population (based on the LRU enrollment estimate of 200 students) are anticipated to be on campus on any given weekday evening.

As was noted before, the Visitor Center workers and visitors leave at 5:30 so there will be limited overlap with arrivals and departures and the existing 146 parking spaces on site will be enough to accommodate both user groups. Even if for example, there were 30 Visitor Center patrons parked in the parking lot and 20 Chamber staff still in the building at closing time at 5:30 p.m., there would be 96 available spaces for students arriving at the site for their classes.

On weekends the Visitor Center is also open with five staff and volunteers and LRU will offer weekend courses to students. Again if 50 students were on-site for weekend classes and if the Visitor Center with 5 staff and volunteers and an additional 65 parking spaces were in use all day long by visitors there would still be 26 available parking spaces. In summary, the existing parking will accommodate the daily Chamber of Commerce needs and Visitor Center activity even with the students coming for evening and weekend classes because of the large number of existing parking spaces.

To ensure that University related traffic does not exceed intended levels of service for this location, staff recommends that if the University wishes to have enrollment exceed 300 students (which would mean around 75 students at the campus on weekday evenings based on the estimate of 25% being present on-site) that the parking again be reviewed. We believe the university can expand to a certain extent without additional review as the parking analysis showed adequate parking for up to 300 students. If enrollment exceeds this amount, staff believes it important to set a threshold for review to ensure that the shared uses are successfully functioning together on the site. If that review warrants changes, staff will proceed accordingly which may include amending the conditional zoning permit to accommodate the additional impacts.

This proposal was recommended for approval with conditions by the Technical Review Committee on January 3, 2012. There were very few comments with the exception from the Transportation Department that a bus shelter be constructed along Montford Avenue adjacent to the property. The recommendation derives from the Transit Master Plan which recommends a

bus shelter at the upper end of Montford Avenue. Staff recommendations may be considered in approving the proposal because it is conditional rezoning.

At the Planning and Zoning meeting, the Chamber director stated a desire that they should not be required to add the bus shelter along Montford Avenue due to the estimated cost and because they feel that very few students will arrive at the site using the transit system. The director also commented that no staff or visitors arrive at the Visitor's Center by transit either.

Staff noted that when a use expands it adds neighborhood impacts and should comply with City adopted goals and plans. The bus shelter recommendation is a standard recommendation for such an expansion of uses. After resistance to this recommendation was registered, staff reviewed project files for a number of other proposals where a bus shelter was recommended during Conditional Zoning and Level III approvals. The staff believes that the request is reasonable as these recommendations were confirmed by the Council in all of these instances.

Public comment on the topic centered on potential traffic activity at Hill Street and Montford Avenue and the safety of that intersection. The Traffic Engineering Department has reviewed the existing roadway alignment and has not noted any needed changes to this intersection.

Members of the Montford Neighborhood Association have also expressed interest in having the entire property included in the Montford Historic District boundary. The association feels that any future development on the site should be coordinated with the design standards of the district. This request to study the site for potential district expansion was considered and approved by the Planning and Zoning Commission during their meeting as a separate action from the conditional zoning request. It will now be taken up with the Historic Resources Commission who will review the map amendment request and vote to recommend approval or disapproval of the expansion based on the merits of the site and application.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed project has been reviewed by City staff and appears to meet all public health and safety related use and activity on the property.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The project is using an existing site and no physical changes are proposed for the project site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The proposed uses and the site are positive additions to the Asheville community and the immediate surrounding neighborhood. No negative impacts from the expanded use are expected.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The site is already developed and the current building is in-scale with the surrounding neighborhood and area. The building was originally reviewed by the Historic Resources Commission to ensure compatibility with the goals of the neighborhood.

**5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The site is already developed and the form of the building, which is multi-story with full access at street-level is designed to have a variety of possible uses ensuring its adaptability over time. The conditional zoning request is a successful example of a form-type of building adapting to a major change of use from its original purpose. By definition this is sustainable development.

**6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** The site is located at the intersection of Montford Avenue and Hill Street is well positioned for convenient access to transportation options. I-240 is immediately adjacent to the property and both Montford Avenue and Hill Street are served by Asheville Transit System Route 11 and a bus shelter has been requested for Montford Avenue as a part of the Technical Review Committee review. All other aspects of site infrastructure are in place to handle the existing and proposed uses.

**7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The subject project will not adversely impact the surrounding street network from a traffic engineering perspective. The proposed new use is primarily an evening and weekend use that is not expected to create undue traffic congestion for the surrounding area.

Based on the above findings and the analysis provided in the report, staff finds this request, with conditions noted, to be reasonable.

Pros:

- Allows a new educational partner to expand opportunities for the local work force.
- Permits an existing site to be more fully utilized without creating undue impacts on the surrounding community.
- Ensures the future relevance of an existing underutilized structure by permitting a new activity with minimal changes to the interior of the building.

Con:

- Brings more activity to the site and neighborhood than has been there especially during the evenings and on weekends (a potential pro).

The Planning and Zoning Commission reviewed the proposal at their meeting on February 1, 2012. The discussion focused on mitigating the impacts of the proposal by having a student enrollment cap. The Commission also discussed the recommended condition that a bus shelter be provided along Montford Avenue and a bus pad be added along Hill Street as noted in the TRC report. After consideration of the issues they agreed to keep this recommendation in the motion to approve. The Commission voted 7-0 to approve the described graduate program expansion with a student enrollment of up to 300 students (maximum on-site attendance of not more than 75 students at any given time), subject to the operation standards submitted by the applicant and the requirements of the TRC report. Staff also supports this recommendation as amended during the review process.

Mayor Bellamy opened the public hearing at 5:31 p.m.

Mr. Paul Knott, Director of the Center for Graduate Studies of Asheville at Lenoir-Rhyne University, was excited about their partnership with the Chamber of Commerce on this initiative. He explained how they are committed to be a part of the community and that they plan to open in August of 2012. He then spoke about the programs offered and urged Council for their support.

Mayor Bellamy closed the public hearing at 5:34 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith moved for the adoption of Ordinance No. 4062, to conditionally zone property located on 36 Montford Avenue from Community Business I District to Institutional District/Conditional Zoning to allow for a satellite graduate school campus, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) Changes to the site that expand the uses may require review by appropriate bodies; (3) Any alterations to the interior of the building and additional signage may require permits by separate application; and (4) If the University wishes to expand enrollment potential above 300 a traffic analysis will be required. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 27 - PAGE 312**

**D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING FOR WEIRBRIDGE VILLAGE LOCATED AT 1709 HENDERSONVILLE ROAD FOR THE ADDITION OF A RIGHT-IN, RIGHT-OUT ENTRANCE DRIVE FOR A COMMERCIAL OUTPARCEL**

**ORDINANCE NO. 4063 - ORDINANCE TO AMEND THE CONDITIONAL ZONING FOR WEIRBRIDGE VILLAGE LOCATED AT 1709 HENDERSONVILLE ROAD FOR THE ADDITION OF A RIGHT-IN, RIGHT-OUT ENTRANCE DRIVE FOR A COMMERCIAL OUTPARCEL**

Urban Planner Julia Fields said that this is the consideration of an ordinance to amend the conditional zoning for Weirbridge Village located at 1709 Hendersonville Road, for the addition of a right-in, right-out entrance drive for a commercial outparcel. This public hearing was advertised on February 17 and 24, 2012.

In 2006, 20.66 acres of property located at the corner of Hendersonville Road and Racquet Club Road was conditionally zoned from RM-6 (Residential Multi-Family Low Density) District to HBCZ (Highway Business Conditional Zoning) District to allow for the development of a major multi-family housing development (originally proposed for 336 units) with commercial outparcels along Hendersonville Road. As proposed, the commercial portion of the development was shown as suburban commercial outparcels abutting Hendersonville Road. However, as opposed to traditional suburban commercial outparcels where there are separate curb cuts for each outparcel, the developer proposed to access all commercial parcels off of a single road (Weirbridge Drive) running parallel to Hendersonville Road.

The commercial development was restricted under this approval to no more than five commercial parcels with no commercial parcel being greater than 3 ½ acres in size. No big box stores, night clubs, bars, adult uses or dance clubs are allowed and commercial uses are limited to: financial institutions, pharmacies, restaurants, professional offices, retail sales, bakeries, barber shops and salons, bookstores, medical clinics, delicatessens, florist, gift shops, grocery stores, and health and fitness facilities. No 24-hour uses are permitted other than bank ATMs and pharmacies. Architectural standards were required to be placed on the commercial buildings so that they would complement the materials and design in the architecture of the residential buildings. No commercial building can be greater than 25,000 square feet GFA in size or greater than 30 feet in height. Outdoor storage is not permitted.

Since the initial conditional zoning approval, two amendments have been approved for the project. One reduced the number of dwelling units from the originally approved 336 to 280 and reconfigured the location and reduced the number of the buildings housing the dwelling units. A second amendment approved a comprehensive sign package for the development.

Subsequently, two outparcels (financial institutions) have been developed with access off of Weirbridge Drive.

The applicant is now proposing a third amendment to allow for a right-turn in/right turn-out access point to the 2.07 acre parcel just north of the parcel on which the Wells Fargo bank is located. This access point has been initially approved by NCDOT who controls Hendersonville Road but must be approved by the City Council as such an access amends the original conditional zoning approval for the property. The access point is between two intersections; approximately 140 feet from the intersection of Hendersonville Road and Racquet Club Road and approximately 280 feet from the intersection of Hendersonville Road and Weirbridge Drive. Both of these intersections have traffic lights.

The principal reason for the need for this access point (and this amendment) is due to the change (from what was originally proposed) in the design of the retaining wall on the northwestern side of the commercial portion of the project. As the project was being developed, several factors led to a change in the location and size of this retaining wall. As originally proposed, fill dirt for the commercial property was to come from the proposed residential portion of the property. In an effort to save as many trees as possible on that residential portion, the grading plan was revised to obtain the fill dirt on the commercial portion by lowering the northern corner of this property (adjacent to Racquet Club Road) to create a larger flat area. This necessitated extending the length of the proposed retaining wall. The increased length of the retaining wall eliminated two of the originally proposed driveway connections to Weirbridge Drive leaving only one.

There is no contract for a proposed development on this site. Potential uses could be anything allowed for the HBCZ zoning as originally approved by Council. One or two potential uses are possible on this remaining commercial portion.

Staff is concerned with this amendment, feeling that it takes away one of the more attractive aspects of the original proposal - that there would only be one roadway access point off of Hendersonville Road. Staff does recognize the limitations that resulted from the retaining wall change which was brought about in an effort to save as many of the existing large trees on the property as was possible. Staff is also concerned with the traffic impact on Hendersonville Road so close to the intersection of Hendersonville and Racquet Club Roads. It is felt that a right in/right out driveway entrance is the only suitable type access if one should be permitted. Any proposed development will be reviewed as a Level One by staff. That review would include a traffic impact analysis if one is warranted due to trip generation. While there is no contract on the site, a fast food chain, which is looking at the development potential on a portion of this property, would require a traffic impact analysis.

This proposed amendment was reviewed and approved with conditions by the City's Technical Review Committee on February 6, 2012. Conditional zoning amendments generally are not reviewed by the Planning and Zoning Commission.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   Any commercial development that is proposed for this site will be reviewed as a Level I project by staff and will have to comply with all applicable City regulations.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate**

**vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
There are no significant natural or topographic features impacted by the proposed amendment to the conditional zoning approval.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The proposed amendment should not have an impact on the value of adjoining or abutting property. It should make the vacant commercial parcel more attractive for development.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The proposed amendment will not affect the character of the area as Hendersonville Road in the vicinity is largely commercial strip development.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The proposed amendment supports the goal/strategy of maximizing the efficiency of the existing transportation system by including access management strategies in alterations to roadways. However, these same access management strategies also seek to limit the number of driveway cuts.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The proposed amendment does not address use which was addressed in the original conditional zoning ordinance.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
Any development proposal will be reviewed as a Level I project. Such a review will include a review of transportation issues and may call for a traffic impact study to be conducted. This review process will be limited to the basic standards and regulations.

Pros:

- The proposed amendment provides additional access to a property for which access is limited.
- Improved access should help with the marketing of the site.
- The amendment is for a right out/right in only access.

Cons:

- The amendment would allow for a curb cut on Hendersonville Road in close proximity to the intersections of Hendersonville and Racquet Club Roads and the intersection of Hendersonville Road and Weirbridge Drive.
- The amendment is somewhat inconsistent with the original commitment for controlled access and minimizing potential traffic issues.

Staff is concerned with an access point being located between these two signalized intersections without a traffic study being conducted based on a proposed use. As a traffic study would have to be reviewed by staff as part of a Level I review of any proposed development, however, staff recommends approval of this conditional zoning amendment subject to the conditions listed.

Mayor Bellamy opened the public hearing at 5:39 p.m.

Mr. Clay Mooney, landscape architect for the project, explained why this amendment is being requested. Due to the decision to minimize the impact for the residential portion and save trees, retaining walls had to be built. Because of those retaining walls there is now limited access and they have not been able to succeed in attracting someone to build on that property. He explained how traffic has been on their minds throughout this project, noting the new traffic improvements they have made. They have met with the N.C. Dept. of Transportation and they have initially given approval pending a formal receipt of a driveway permit application. The right-in and right-out seems the only reasonable course of action in order to have development flexibility. He hoped Council would support this amendment.

Mayor Bellamy closed the public hearing at 5:46 p.m.

Councilman Smith felt this is a good example of an urban density project.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith moved for the adoption of Ordinance No. 4063, to amend the conditional zoning for Weirbridge Village located at 1709 Hendersonville Road, for the addition of a right-in, right-out entrance drive for a commercial outparcel, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; and (3) The design, construction materials and orientation of development on the site must comply with the conceptual site plan presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards. This motion was seconded by Councilman Hunt and carried unanimously.

**ORDINANCE BOOK NO. 27 - PAGE 316**

**E. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY AND EXPAND SIGN CODE STANDARDS**

**ORDINANCE NO. 4064 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY AND EXPAND SIGN CODE STANDARDS**

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance amending the Unified Development Ordinance to clarify and expand sign code standards to better address existing needs and practices. This public hearing was advertised on February 17 and 24, 2012.

Over the last year, interest in a collection of sign code amendments has grown and been intermittently discussed amongst staff and the Planning & Economic Development Committee.

The City of Asheville has had sign regulations since 1977 and has gone through a variety of amendments over the years with perhaps the most significant amendment occurring in 1989 when the standards were overhauled and new allowances established with significant stakeholder input – this is what was commonly referred to as the "sign code". In 1997 the zoning code, sign code, and other separate codes were incorporated into the current ***Unified Development Ordinance (UDO)*** where the basic sign allowances were generally maintained. At this time, however, the sign standards were also expanded to include a number of new categories of signage not previously considered. This provided more flexibility and options for affected properties and for some unique signage needs.

During this same time period (late 80's and early 90's) there was much attention given to signs and sign standards with equally fervent opinions expressed from both business owners who wanted more and larger signs to provide better business identification, and from citizens who were fighting the proliferation of sign "clutter" that they believed was becoming increasingly common and objectionable from an aesthetic, wayfinding, and safety perspectives. In response, a large and diverse stakeholder group was formed and met regularly for approximately a year as standards were negotiated and revised. Every effort was made to be fair and reasonable, and to satisfy the number of divergent concerns. The critical work of this group continues to influence the city's application and development of sign standards with an emphasis on providing opportunity for legitimate business needs while controlling intrusions and unnecessary distractions that could cause safety hazards for drivers and pedestrians.

Our experience reflects that the sign code standards and their interpretation and application receive the greatest level of resistance from some sectors of the business community over any other section in the zoning code, despite the extent of the options and the moderate allowances offered. And enforcement of this code also receives a very strong scrutiny from the public and business competitors. In conversation with senior staffers, concern over sign standards goes back as far as we can recall and consistently gets raised periodically, year after year. And the pendulum seems to swing from year to year from concern that there is inadequate enforcement to concern that the standards are overly restrictive. Additionally, when speaking with other zoning enforcement personnel across the region, and seeing the content of sessions at national conferences, the tension with sign code standards appears to be a fairly universal phenomenon and is notorious for the challenges involved with enforcement.

Asheville has attempted to deal with some of this tension by convening stakeholder groups to identify the fair and reasonable "middle ground" and an informal benchmarking study conducted three years ago confirmed Asheville's position as neither the most restrictive nor the most lenient of cities in the southeast. Nevertheless, Asheville City staff continues to experience complaints on a regular basis (on both sides of the debate) for numerous reasons.

Eventually, a new Comprehensive Plan will be developed and the UDO will likely require some significant updating as part of implementing that new plan. There has been growing interest in simpler form-based codes for certain sections of the ordinance, and the sign code is one section that translates very well into a form-based version. Until that time however, there is a series of relatively minor amendments that can be considered.

As with all ordinances, it is challenging to anticipate all development possibilities and most standards are designed for the most common situations. For those that are atypical, a variance process is provided and relief from the sign standards can be considered when there exists a physical hardship to the site. The variance process has been an effective tool and is a relatively simple and expedient application process. This same variance process has also been very effective in revealing common scenarios where consideration of new standards to address recurring situations may be of benefit. This, combined with the identification of common permitting challenges, frequently applied interpretations, and news and information from the planning profession and sign industry, has helped establish a small list of sign code amendments that are designed to bring clarity to the existing standards, while also providing new opportunity for difficult but not entirely uncommon situations. A summary of those amendments is as follows:

**Article XIII Amendments**

**Campaign signs.** Clarify that the 30 days begins prior to the first day of polling, which will begin with early voting.

**LED signs.** Allow digital and LED changeable copy messages to change once every 4 hours.

**Second tier development signage.** Remove second tier allowances and replace with an option that would allow a land-locked property tenant signage on an adjacent free-standing, multi-tenant sign. Requires cooperation from adjacent property owner. Intent is to maintain sign allowances and not increase the number of structures, but allow existing sign structures to be shared.

**Signs on vehicles.** Clarify standards so that vehicles with signage parked on site must be parked in a proper, striped space and shall not be parked in aisles, or grassy medians, etc. and cannot block another businesses sign. Vehicles with signage stored off-site must be parked to minimize visibility. Add a second clarifier to prohibit mobile billboards.

**Temporary sign material.** Allow a temporary material to be used for a permanent sign for a period of 6 months to one year – after which its replacement with a permanent material would be treated as a face change.

**A-frame signs.** Clarify standards to permit one A-frame sign per public entrance when entrances are located on separate street frontages.

**Housekeeping.** 1) Add Urban Place and Airport to the table for commercial signage. 2) Fix allowance (60 s.f.) for NCD, CBI, NB, URD and UP.

**Signs in City rights-of-way.** Allow signs to be located within a city right-of-way when:

- The right-of-way is greater than 75 feet
- The City Traffic Engineer has determined that no traffic concern is created
- Sign location is a minimum of 25' from edge of pavement
- No variances to sign allowances are permitted

The Planning & Economic Development Committee reviewed an outline of the changes and supported its moving forward. The Planning & Zoning Commission reviewed the changes at their November 2, 2011, meeting and unanimously recommended approval. At this same meeting, the Commission also recommended that staff return with some amendments to the standards regulating digital billboards – this item is being reviewed separately and is scheduled for the City Council's March 27th meeting.

This proposal supports goals for job growth and community development by expanding options for businesses while also researching new formats for the UDO.

Pros:

- Provides greater flexibility for difficult but not uncommon signage situations.
- Provides improved clarity to existing sign standards.

Cons:

- Adding new standards may contribute to the overall complexity of the code.
- Increasing opportunities could increase the total number of signs in the environment.

There is no direct fiscal impact.

Ms. Tuch said that City staff recommends approval of this wording amendment, with a minor amendment to Section 7-13-5 (c) to read "Properties located one lot back from a thoroughfare with no direct street frontage and having shared access with adjacent or adjoining

parcels may share space on an adjacent property's free-standing sign in lieu of the second tier property's free –standing sign allowance."

Mayor Bellamy opened the public hearing at 5:56 p.m., and when no one spoke, she closed it at 5:56 p.m.

Councilman Smith said that he is looking forward to moving toward form-based codes.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Manheimer moved for the adoption of Ordinance No. 4064, with the minor amendment outlined above by Ms. Tuch. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 321**

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 12-51 - RESOLUTION PROMOTING PARTICIPATING IN THE 10% LOCAL FOOD CAMPAIGN**

Ms. Cathy Hohenstein of the NC Cooperative Extension gave several statistics of the NC 10% campaign, outlining that the levels of support, and resources that can help if the 10% commitment is fulfilled through the seasons. She also outlined the following three ways that organizations or businesses can fulfill their commitment (1) pledge of purchase: organization can make choices with the 10% campaign in mind, when having foods at meetings or events; (2) participate in an employee or member program: organization can encourage employees or participants of services to join the 10% campaign and sign up on the campaign website as individuals; and/or (3) promotion or outreach program: use organizations website, listserv, events and external publications or promote the 10% campaign.

Said resolution reads: "WHEREAS, North Carolina has the opportunity to harness consumer spending on food to bolster the sustainability of local farms and fisheries, support economic development, job creation and help address diet-related health concerns; and WHEREAS, consumers are demanding locally produced foods and food producers are responding positively to this increased consumer demand; and WHEREAS, the demand for locally produced foods has not been diminished by a weak economy; and WHEREAS, there is significant potential for local food and farming businesses to be an economic development engine in North Carolina, particularly in rural areas; and WHEREAS, in 2009, North Carolinians spend about $35 billion a year on food; and WHEREAS, if individuals spent 10 percent of their food dollars on local foods, approximately $3.5 billion would be available in the local economy; and WHEREAS, city governments have an important role to play in supporting their local food systems; and WHEREAS, city governments set policies to procure local foods; and WHEREAS, city governments may commit to purchasing local foods when hosting meetings, conferences and or workshops; and WHEREAS, the Center for Environmental Farming Systems'**10% Campaign** supports local and regional food economies that benefit local food producers, related businesses and communities; and WHEREAS, the North Carolina Cooperative Extension Service is working in support of the **10% Campaign** in all 100 counties, including Buncombe County; and WHEREAS, these on-the-ground experts are working with other community leaders, farmers, businesses, parents, teachers and students, many of whom are already working to build the state's sustainable local food economy, from farm to fork; and WHEREAS, the City is responsible for promoting economic development and job creation; and WHEREAS, the City is responsible for protecting and enhancing the health, welfare and safety of its resident in prudent and cost-

effective ways; and WHEREAS, the citizens of Asheville will benefit significantly through the success of the **10% Campaign** through a stronger economy and access to fresh, affordable meats, produce, fish and shellfish; NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: The Asheville City Council pledges to access its ability to source local foods and to promote participation in the **10% Campaign** to its employees and citizenship as appropriate to help build the local food economy."

When Mayor Bellamy asked for public comments, none were received.

Councilman Smith spoke in support of this resolution and hoped that the City would go well above the 10% in regard tour local food preference.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 12-51. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 288**

**B. RESOLUTION NO. 12-52 - RESOLUTION APPOINTING MEMBERS TO THE ALCOHOLIC BEVERAGE CONTROL BOARD**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that the term of Charles Worley, as a member on the Alcoholic Beverage Control (ABC) Board expired on November 13, 2010. On November 22, 2011, City Council appointed Mr. William Russell to replace Mr. Worley; however, Mr. Russell declined the appointment.

The following individuals have applied for the vacancies on the ABC Board: Genny Lynn Beville, Tim Flora, Mark W. Cates, Guadalupe Chavarria, Randall C. Hall, Judy Kuhne, Fred Cooke and Charles Larrick.

On February 14, 2012, City Council instructed the City Clerk to arrange interviews for Guadalupe Chavarria, Melissa English, John Menkes and Randall Hall.

After Council spoke highly about all the candidates, the majority of Council voted to appoint John Menkes to serve a three year term, term to expire November 13, 2014, or until his successor has been appointed.

**RESOLUTION BOOK NO. 34 – PAGE 290**

**C. RESOLUTION NO. 12-53 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION**

Vice-Mayor Manheimer said that there current exists a vacancy left on the Historic Resources Commission by Mr. John Dean, whose term expires July 1, 2012.

The following individuals have applied for a vacancy on the Historic Resources Commission: Jay Lively, Jay Marino, Anne Harrell, Frank Hallstrom, Deanna Reeder, Michael Bragg and Tracey Rizzo.

On February 14, 2012, it was the consensus of Council to interview Jay Lively, Tracey Rizzo and Deanna Reeder.

After Council spoke highly of all the candidates, the majority of Council voted to appoint Tracey Rizzo to serve the expired term of Mr. Dean, and then a full three-year term, July 1, 2015, or until her successor has been appointed.

**RESOLUTION BOOK NO. 34 – PAGE 291**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Dan Bridges spoke about some of the following concerns he has experienced in his capacity of a volunteer in the handicapped parking program: (1) he is unable to find the correct person to voice his concerns; (2) handicapped parking signs for some new area businesses are 3.5 feet off the ground, but should be 6.5 feet off the ground; (3) no handicapped signs for some area businesses; (4) some handicapped signs are not legible; and (5) stripping of handicapped spaces. City Manager Jackson said that he would investigate Mr. Bridges concerns and report back to him and Council.

Mr. Fred English urged Council to oppose I-95 becoming a toll road through North Carolina as it will affect the price of what we pay in North Carolina.

Mr. Tim Sadler commented about the need for better density bonuses and urged Council to adopt a policy making zero waste as a goal for the City by 2020.

Ms. Gretchen Lewis thanked Council for the increase in recyclable materials and the City's participation in the 10% local food campaign. She hoped Council would keep sustainability and climate change as a priority in all their decisions.

Mr. Chris McGrayne urged City Council to support the City's demolition of unsafe private property.

Councilman Davis was pleased to announce the Southern Conference Basketball Tournament which will be in Asheville this weekend - March 2-5, 2012. He urged all citizens to come by the newly renovated US Cellular Center or the Kimmel Arena at UNC-Asheville to enjoy a weekend of basketball.

**Senate Bill 183**

Mr. Judy Mattox, Chair of the local Sierra Club Group, requested city Council help regarding Senate Bill 183 that allows 350 feet of clear-cutting on both sides of billboards on state rights-of-way. Dyke Longest, Director of the Duke Environmental Law and Policy Clinic, will file a suit on behalf of Scenic North Carolina, to challenge the temporary rules regarding the law and to request that the implementation of the law be moved back into the summer instead of starting on March 1. She asked the City to (1) write an amicus brief in support of their Complaint and Motion for Preliminary Injunction; (2) contact the N.C. Dept. of Transportation (NCDOT) and the Governor's Office asking them to suspend the temporary rules; (3) convene with other cities to discuss the possibility of city-initiated litigation over the temporary rules; (4) contact the NCDOT to ask for copies of permit applications in their city and their extraterritorial jurisdiction; (5) start documenting and investigating illegal cutting activity; (6) contact the NC League of Municipalities, NC Assoc. of County Commissioners and the Metro Mayors to urge them to fight this at the General Assembly in May; and (7) organize a coordinated strategy call with some other counties and cities with similar concerns, such as Charlotte, Boone, Winston-Salem, Raleigh, Wilson, etc.

Mayor Bellamy noted that Council expressed their opposition to this Bill last year in their legislative program. It was the consensus of Council to ask City Attorney Oast to review information regarding this Bill and provide Council an update at their next formal meeting, including what other communities are doing.

**Closed Session**

At 6:37 p.m. Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: Henderson County Cane Creek Water and Sewer District, Asheville-Buncombe-Henderson Water Authority, Buncombe County, and City of Asheville. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(11); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 7:15 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilman Bothwell and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:15 p.m.

Magdalen Burleson
CITY CLERK

Jan M Bellamy
MAYOR

Tuesday – March 13, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Cecil Bothwell (family emergency)

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Hunt gave the invocation.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 28, 2012**

**B. RESOLUTION NO. 12-54 - RESOLUTION AUTHORIZING THE CITY MANAGER ENTER INTO A CONSTRUCTION CONTRACT WITH CANA CONSTRUCTION FOR THE BREVARD ROAD 24-INCH WATERLINE AND WATER SYSTEM IMPROVEMENTS PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to enter into a construction agreement with Cana Construction, in the not-to-exceed amount of $162,188.00, for the Brevard Road 24-inch Water Line and Water System Improvements Project.

On February 2, 2012, the Water Resources Department issued an Advertisement for Bids for the Brevard Road 24-inch Water Line and Water System Improvements Project to upgrade the water system between Interstate 26 and the entrance to the Biltmore Square Mall. The scope of the project includes all labor, materials, and equipment required for: (1) the installation of approximately 848 linear feet of a new 24-inch ductile iron pipe with related appurtenances; and (2) completion of the last planned section of transmission line along Brevard Road.

On February 23, 2012, Water Resources received seven (7) bids for the project in response to the Advertisement for Bids. Companies responding were:

1. Cana Construction – Waynesville, NC
2. Steppe Construction, Inc – Mill Spring, NC
3. T & K Utilities, Inc. – Asheville, NC
4. Patton Construction Group, Inc.– Arden, NC
5. Chandler Construction Services, Inc.– Ninety Six, SC
6. Wateree Construction Company, Inc. – Sumter, SC
7. Payne, McGinn and Cummins, Inc.– Travelers Rest, SC

The bids were reviewed by the Water Resources Department and the City's Office of Economic Development (Minority Business Plan Compliance) with all officers recommending approval of Cana Construction as the lowest, responsible bidder in the amount of $162,188.00.

This project is part of City Council's strategic plans to improve city infrastructure and provide local companies with labor opportunities.

Pros:

- This project will complete the last planned section of an important transmission main, which enables the Water Resources Department to efficiently feed large volumes of water from the Mills River Treatment Plant to West Asheville and the rest of the water system.
- This project is aligned with the City and the Water Resources Department goal of continued investment and improvement of the City's water system through Capital Improvement Projects in order to provide safe and reliable service.
- Approval of the construction contract to the lowest, responsible bidder will invest City funds in the local economy.

Con:

- Failure to award a construction contract would prevent the completion of this important transmission line link in the City's water system.

The Water Resources Department currently has the funds needed for this project budgeted in the Water Resources' Capital Improvement Projects Fund.

City staff recommends City Council approval of the City Manager to enter into an agreement with Cana Construction, in the amount of $162,188.00, for the Brevard Road 24-Inch Water Line & Water System Improvements.

**RESOLUTION BOOK NO. 34 – PAGE 292**

**C. RESOLUTION NO. 12-55 - RESEOLUTION SUPPORTING RESIDENTIAL PROPERTY ASSESSED CLEAN ENERGY (PACE) THROUGH HOUSE RESOLUTION 2599, PACE ASSESSMENT PROTECTION ACT OF 2011**

Summary: The consideration of a resolution to encourage federal legislators to support House Resolution 2599.

Residential PACE: The PACE model ran into significant barriers on when the Federal Housing and Finance Administration (FHFA) wrote directives in July 2010 and February 2011 to Fannie Mae, Freddie Mac and the Federal Home Loan Banks to "continue to refrain from buying mortgage loans secured by properties with outstanding first-lien PACE obligations and carefully monitor through their seller-servicers any programs that create such first-lien obligations." The FHFA's stated primary concern is that these type of loans "pose unusual and difficult risk management challenges for the (banks)".

Addressing Federal Barriers

Municipalities across the country have coordinated efforts to address the FHFA barrier through two primary routes: HR 2599 a federal legislative fix and an Advanced Notice of Rulemaking (ANRM) a judicial fix. Asheville City Council can join these efforts to support removing the federal regulatory barriers to residential PACE.

1) HR 2599: This bill is to prevent Fannie Mae, Freddie Mac and other Federal residential and commercial mortgage lending regulators from adopting policies that contravene established state and local property assessed clean energy laws.

2) Advanced Notice of Rulemaking (ANRM): The FHFA was challenged in federal court regarding the legality of the FHFA's ability to intervene regarding PACE without following the required process of rulemaking. Resulting from this case the FHFA is

seeking public comments regarding whether their previous directive should be maintained, changed, or eliminated and whether other restrictions or conditions should be imposed.

Addressing State Barriers

Should federal regulatory barriers be removed North Carolina municipalities would then need to reevaluate state PACE legislation to ensure it complies with new federal guidance.

Commercial PACE: To implement a commercial PACE program the City of Asheville would need to borrow money for the purpose achieving community energy reductions through installing energy efficiency and renewable energy improvements on voluntary private properties. The city would repay the money they borrow by levying a special property tax assessment on the participating private properties. These special property tax assessments would need to cover all costs of implementing the program and would theoretically be made available to the property owner through the energy efficiency savings. In order to implement these projects the city would have to hire a third party administrator to manage procurement, installation and the assessment process on the city's behalf.

Addressing Financing

Staff's analysis indicates that the only financially feasible method for commercial PACE capitalization is through utilizing Qualified Energy Conservation Bonds (QECB's). QECB's are qualified tax credit bonds which allow the borrower to only pay back the principle and the bondholder receives federal tax credits in lieu of traditional bond interest. QECB's are allocated to states who then make allocations to local jurisdictions. For each allocation 70% must be used for public projects and no more than 30% are allowed to be used for private activity projects. The City of Asheville did not receive a direct allocation. Buncombe County did receive an allocation totaling $2,394,259 and it is staffs understanding that they do not intend to utilize this borrowing option. The QECB rules indicate that the county can allow the city to access this allocation on their behalf.

Commercial PACE next steps:

1. Establish strategic partnerships with potential commercial partnership to establish a stakeholder group of likely commercial borrowers for a pilot program.
2. Continue to research available financing methods.
3. Design a pilot program for council consideration.

This item went to the Sustainability Advisory Committee on Energy and the Environment on February 15th and was unanimously supported. The Council Finance Committee reviewed this item on February 28th at which point they recommend this go before the full Council.

These actions support the following Council strategic goals: (1) Explore opportunities to enhance affordability by reducing utility costs through innovative energy efficiency financing programs; and (2) Work with regional partners to create incentives for green building, energy conservation and energy independence.

There is no fiscal impact associated with the staff recommendation.

Regarding Residential PACE, staff recommends Council pass a resolution to encourage federal legislators to support HR 2599 and write a letter to the FHFA with public comments.

Councilman Davis stated that he would only support staff looking into Commercial PACE.

Councilman Hunt felt it was appropriate to incentivize energy efficiency thorough a program like PACE. He understands we are only directing staff to research the Commercial PACE further and it will be reviewed through the Finance Committee prior to coming to Council.

**RESOLUTION BOOK NO. 34 – PAGE 294**

**D. RESOLUTION NO. 12-56 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A FOUR YEAR CONTRACT WITH THE N.C. DEPT. OF PUBLIC SAFETY TO PROVIDE REGIONAL HAZARDOUS MATERIALS EMERGENCY RESPONSE FOR REGION 6**

Summary: The consideration of a resolution authorizing the City Manager to enter into the four year contract agreement with the N.C. Dept. of Public Safety to provide regional hazardous materials emergency response for Region 6.

North Carolina is divided into seven geographical regions for the purpose of hazardous material emergency response. The N.C. Dept. of Public Safety formerly known as Dept. of Crime Control and Public Safety contracts with municipalities across North Carolina to respond into the geographical regions and provide technician level hazardous materials emergency response. The region six areas encompass the westernmost twenty counties.

The N.C. Dept. of Public Safety formerly has offered a contract agreement to the City of Asheville for Hazardous Materials Emergency Response Services for contract years of July 1, 2012 through June 30, 2016. The City of Asheville has been a regional hazardous materials provider since FY 1994-1995. The State of North Carolina provides funding that fully supports the operational costs of the program.

The City Council Public Safety Committee reviewed and unanimously recommended this action. This program is also consistent with the City's Strategic Operating Plan regarding partnerships.

Pros:

- The State of North Carolina provides the hazardous materials response truck, all response equipment and provides for administrative costs of operating the team. In addition, the state funds extensive training for members of the Asheville Fire Department to enable us to competently handle hazardous materials emergencies.
- The City of Asheville has full use of the truck and all specialty equipment within the City of Asheville. Without the state hazardous materials contract, Asheville taxpayers would need to provide much of the resources necessary to properly respond to emergencies within Asheville. With the contract, we have the advantage of the equipment and resources being funded at the state level, rather than at the local level.
- During the eighteen years that we have provided regional hazardous materials response services, we have not experienced difficulties or disadvantages with the program.
- Firefighter and citizen safety will be enhanced.

Con:

- None have been identified or known at this time.

This contract generates approximately $65,000 in revenue for the City of Asheville which is expended on operating our hazardous materials emergency response program.

City staff recommends City Council authorize the City Manager to enter into the four year contract agreement with the N.C. Dept. of Public Safety to provide regional hazardous materials emergency response for Region 6.

**RESOLUTION BOOK NO. 34 – PAGE 295**

**E. RESOLUTION NO. 12-57 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SITE DEVELOPMENT CORPORATION INC. FOR THE PATTON AVENUE SIDEWALK PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a contract (and all change orders in the amount of 20% of the contract or $77,000) with Site Development Corporation, Inc. in the amount of $387,307.25 for the project known as Patton Avenue Sidewalk Project, Project # ENG-11-12-005.

A formal request for bids was issued on February 3, 2012, and bids were opened on February 23, 2012. There were a total of 4 bids received with the lowest responsive bidder being a North Carolina based contractor, Site Development Corporation, located in Cliffside, N.C., with an amount of $387,307.25. With the addition of a 20% contingency, the total budgeted amount for this project is $464,307.25. This will be a unit price contract and not a lump sum contract and is part of the City of Asheville's CIP program.

This action complies with the City Council Strategic Operating Plan of Multimodal Transportation in that it will meet the need of increasing the output of sidewalk construction and provide sidewalk in an area that is in need of sidewalk linkage.

Pros:

- Provides a pedestrian linkage by connecting existing sidewalks.
- Will be a step forward in meeting the City's Strategic Plan and current fiscal year CIP goals.
- Is listed as an identified need on the City of Asheville pedestrian plan.

Cons:

- Project management and contract administration will consume staff time and City funds.
- Temporary lane and driveway closures.
- The new construction will increase the maintenance load on the City.

This project is part of the $1.3 million sidewalk construction program that City Council approved as part of the FY 2011-12 Capital Improvement Budget. Funding will come from debt proceeds.

Staff recommends City Council to authorize the City Manager to execute on behalf of the City of Asheville a contract with Site Development Corporation in the amount of $387,307.25 for the project known as Patton Avenue Sidewalk Project, and all change orders in the amount of 20% of the contract or $77,000.

Councilman Pelly spoke in support of sidewalk construction in this area of the City.

**RESOLUTION BOOK NO. 34 – PAGE 296**

**F. RESOLUTION NO. 12-58 - RESOLUTION AUTHORIZING THE MAYOR TO PURCHASE TWO EASEMENTS ACROSS PROPERTY LOCATED OFF ELIZABETH PLACE FOR THE PURPOSE OF IMPLEMENTING PHASE IV OF THE REED CREEK GREENWAY**

Summary: The consideration of a resolution authorizing the Mayor to execute all necessary documents to purchase both temporary and permanent easements across property identified as PIN #s 9649-23-7140 and 9649-23-7067 located off of Elizabeth Place, in the amount of $3,000, for the purposes of implementing Phase IV of the Reed Creek Greenway.

The City needs easements through two (2) contiguous properties in order to obtain the right-of-way necessary to implement the Phase IV of the Reed Creek Greenway. The total size of the permanent easement is 1,130 +/- square feet and the size of the construction easement is also 1,130 +/- square feet. The proposed compensation is based on the current land value per the Buncombe County Tax Assessment, at fifty percent (50%) of value for the permanent easement and ten percent (10%) of value for the construction easement. The joint owners of the parcels, Elizabeth C. Graham and Nancy Nutter, have agreed to accept $3,000 as compensation for the easements needed. The City will pay for all transaction costs associated with the easement.

This action complies with City Council's Strategic Plan in the Multimodal Transportation section, in that it advances a multi-modal transportation plan, which includes greenways. This action also complies with the Asheville City Development Plan 2025 in that it implements the adopted Greenway Master Plan.

Pros:
- Secures critical easements necessary for the completion of Phase IV of the Reed Creek Greenway.
- Increases the City's inventory of park space.

Con:
- Added maintenance costs.

Compensation for easements is $3,000 plus closing costs. Funding for the stated purchase has been allocated by City Council via the FY 11/12 capital budget. City staff will prepare closing documents and perform final closing.

City staff recommends City Council adopt a resolution authorizing the Mayor to purchase two easements (PIN #s 9649-23-7140 and 9649-23-7067) in the amount of $3,000 from Elizabeth Graham and Nancy Nutter for the purposes of implementing Phase IV of the Reed Creek Greenway.

Councilman Hunt spoke in support of these easements for greenway development.

**RESOLUTION BOOK NO. 34 – PAGE 297**

**G. RESOLUTION NO. 12-59 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH KOSTELEC PLANNING LLC TO PREPARE THE LONG RANGE TRANSPORTATION DEMAND MANAGEMENT PLAN**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Kostelec Planning, LLC. to prepare the Long Range Transportation Demand Management Plan.

Transportation Demand Management (TDM) is the application of policies and strategies that attempt to optimize existing transportation resources and infrastructure by mitigating single occupancy vehicle use in a defined area. TDM programs have the potential to deliver better environmental outcomes, lower parking demands, improved public health, stronger communities, and a more prosperous and livable city.

The TDM program, which was hosted by the City from FY 2005 until FY 2011, focused on promoting alternatives to single occupancy vehicles mainly inside the City limits. The program was funded by the City and the N.C. Dept. of Transportation (NCDOT) with each entity contributing 50% of the needed funds. NCDOT expressed the need to set regional goals to improve the quality of life for the citizens of Western North Carolina by providing education,

support and resources that would enhance and promote alternatives to driving alone. In order to evaluate the adequacy of these goals and to continue the program, the NCDOT wants to perform an analysis, known as the Long Range Transportation Demand Management Plan, which would provide new strategies that would allow transportation demand management to grow accordingly to regional needs.

Due to the regional nature of the study, and as recommended by the NCDOT, the City signed an agreement with the Land of Sky Regional Council of Governments (COG) to manage the study. The Council approved the agreement on August 23, 2011. The Council issued a Request for Proposals (RFP) on November 2, 2011, and it closed on December 30, 2011. Proposals were received from the following firms:

- Martin/Alexiou/Bryson, P.C.
- Kostelec Planning, LLC.
- UrbanTrans North America
- Tindale-Oliver & Associates, Inc.

The proposals were evaluated by a selection committee that included 14 members from different agencies, including the City of Asheville, Western North Carolina Alliance, Buncombe County, Henderson County, the NCDOT, UNC-Asheville, Haywood Community College, the Chamber of Commerce, and staff/members of the Technical Coordinating Committee and Transportation Advisory Committee of the French Broad River Metropolitan Planning Organization. The selection committee individually evaluated and scored the proposals, then combined the scores. The evaluation process took about two months and numerous meetings to ensure that all aspects relevant to the RFP were considered. During the process, the firms were asked to provide additional information to help clarify questions posed by the committee. The firms were evaluated based on their experience, similar projects completed, team qualifications, quality of proposal, and project management plan. This procurement process has followed Federal regulations that apply for professional services contracts and geographic preference is not a factor to be considered.

After careful review and consideration of all the evaluation factors and the information provided, the selection committee recommended Kostelec Planning, LLC to prepare the Long Range Transportation Demand Management Plan.

The total project cost is $99,620. The project will be funded by the Federal Transit Administration in the amount of $79,696 (80%) and the North Carolina Department of Transportation in the amount of $19,924 (20%). The City is not responsible for any of the project cost. The City, as designated recipient, will be responsible for overseeing the use of the project funds according to Federal Transit Administration and NCDOT regulations. The subject task will require staff time that is already budgeted.

This action complies with the City Council Strategic Operating Plan by supporting the fiscal responsibility and green and sustainable focus areas, specifically operating the City of Asheville to the highest levels of fiscal responsibility, leveraging funding from Federal and State agencies; and setting and developing a plan for implementing a community energy reduction goal.

Pros:

- The project will be fully funded by the Federal Transit Administration and the NCDOT.
- The plan will address NCDOT and City of Asheville concerns about the future of the transportation demand management program.
- The plan will provide guidance for future transportation demand management initiatives regarding regional needs.

Con:

- Staff time is needed to oversee the use of the funds.

The total project cost is $99,620. The Federal Transit Administration will provide 80% of the total project cost and the NCDOT will provide the remaining 20%. The City will oversee the use of the funds and will seek reimbursement from both agencies. The budget for the subject project was approved by City Council during January 2011.

City staff recommends that City Council authorize the City Manager to enter into a contract with Kostelec Planning, LLC. to prepare the Long Range Transportation Demand Management Plan.

**RESOLUTION BOOK NO. 34 – PAGE 298**

**H. RESOLUTION NO. 12-60 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A 5-YEAR LEASE WITH DEWINE SEEDS – SILVER DOLLAR BASEBALL, LLC, FOR THE USE OF MCCORMICK FIELD FOR THE OPERATION OF THE ASHEVILLE TOURISTS MINOR LEAGUE BASEBACLL TEAM**

**ORDINANCE NO. 4065 - BUDGET AMENDMENT FOR THE LIGHTING AND PLAYING SURFACE REPLACEMENT PROJECTS; AND TECHNICAL BUDGET AMENDMENT FOR FISCAL YEAR 2011-12 STREET MAINTENANCE EXPENSES**

Summary: The consideration of (1) a resolution authorizing the City Manager to sign a new lease with DeWine Seeds –Silver Dollar Baseball, L.L.C. for the use of McCormick Field for the continued operation of the Asheville Tourists baseball; (2) a budget amendment, in the amount of $390,000, from General Fund pay-as-you-go capital funds for the Lighting and Playing Surface Replacement Projects; and (3) a technical budget amendment, in the amount of $390,000, from debt proceeds for Fiscal Year 2011-12 street maintenance expenses.

On July 1, 2005, the City entered into a 10-year lease with Asheville Tourist Baseball Club, Inc. for the use of McCormick Field to operate a minor league baseball program within the city limits of Asheville. On January 5, 2010, Palace Baseball, L.L.C. entered into an asset purchase agreement with DeWine Seeds – Silver Dollar Baseball, L.L.C. On January 26, 2010, City Council agreed to assign the lease with Palace Baseball, L.L.C. to DeWine Seeds – Silver Dollar Baseball, L.L.C for the continued operation of minor league baseball in the city limits of Asheville.

DeWine Seeds –Silver Dollar Baseball, L.L.C. has been operating the under the original 2005 lease agreement. The City and DeWine Seeds –Silver Dollar Baseball, L.L.C. have been working together to develop a lease with terms that are mutually beneficial for both parties. The current lease agreement calls for the City to provide the following services at a net annual operating cost to the City of approximately $70,000:

| **Current** | |
|---|---|
| Terms | 10 years |
| Annual Lease payment to City | $ 100,000 |
| Annual Capital payment to City | $ 40,000 |

| | **Responsible Party** |
|---|---|

| Current | City | Tourist | Cost |
|---|---|---|---|
| Utilities | X | | $ 92,560.00 |
| Stadium Clean-Up | X | | $ 35,000.00 |
| Playing Field Maintenance | X | | $ 65,000.00 |
| Facility Maintenance | X | | $ 17,000.00 |
| | | | **$ 209,560.00 Annually** |

Under a renegotiated lease, DeWine Seeds – Silver Dollar Baseball, L.L.C would assume responsibility for most operational functions of McCormick Field for baseball operations.

The proposed new terms are as follows:

1. Tourist assumes all operating and staff cost for field and stadium operations
2. Tourist receives all revenue for operations of the stadium.
3. The City will continue to provide building maintenance services for routine maintenance.
4. The City will continue to provide outside landscaping and tree trimming support.
5. The City and DeWine Seeds – Silver Dollar Baseball, L.L.C will develop a separate MOU for the following areas: (a) Facility Naming Rights; (b) Use of Operational Equipment; and © Long Range Capital improvements.

| **Proposed** | | | |
|---|---|---|---|
| Terms | 5 years | | |
| Annual Lease payment | $ 1.00 | | |
| | | **Responsible Party** | |
| **Proposed** | **City** | **Tourist** | **Cost** |
| Utilities | | X | |
| Stadium Clean-Up | | X | |
| Playing Field Maintenance | | X | |
| Facility Maintenance | X | | $ 10,000.00 |
| | | | **$ 10,000.00 Annually** |

Under the new lease agreement, the City's net annual operating cost will be $10,000. Also, as part of the lease agreement, the City commits to capital improvements in the facility according to the schedule below. These investments total $765,000 and will be implemented over the 5-year term of the lease. It is anticipated that these improvements will be funded through General Fund pay go contributions that will be made available by increasing the amount of street maintenance projects that are funded by debt financing. The additional debt service from the streets projects will be approximately equal to the net operating loss under the current agreement.

During the 5-year term of this lease, if other unidentified maintenance issues not outlined below are identified by DeWine Seeds – Silver Dollar Baseball, L.L.C and agreed upon by the City, the below project list will be reprioritized in order to address the new maintenance issues and to stay within the total 5 year investment of $765,000.

| | FY 11-12 | FY 12-13 | FY 13-14 | FY 14-15 |
|---|---|---|---|---|
| Lighting Replacement | 90,000.00 | | | |
| Playing Surface Replacement | 300,000.00 | | | |

| | | |
|---|---|---|
| Clubhouse Renovations | 100,000.00 | |
| Bleacher Replacement | | 275,000.00 |

City Council Finance Committee reviewed the new lease terms on February 28, 2012, and recommended this item to the full City Council.

Pros:

- DeWine Seeds –Silver Dollar Baseball, L.L.C. is committed to keeping minor league baseball in Asheville.
- With the change in the economic climate, this gives the Asheville Tourists and the City an opportunity to make possible changes to a 10-year old lease developed by the previous owner of the Asheville Tourists.

Con:

- None

City will continue to provide Building Maintenance functions such as electrical, plumbing, and HVAC services for the stadium on an as needed basis. The cost is anticipated to be approximately $10,000 per year and will be budgeted in the City's Building Maintenance annual operating budget.

The City will fund the capital projects using General Fund pay-go capital contributions that will be freed up by increasing the amount of streets projects that are funded via debt financing. The additional debt service for the streets projects is anticipated to be approximately equal to the City's current investment in operating the McCormick Field. A budget amendment in the amount of $390,000 is included to appropriate funds for the Lighting and Playing Surface Replacement Projects in the current fiscal year. The other capital projects will be included in the five year CIP that staff presents to Council as part of the FY 2012-13 Budget. A technical budget amendment is also included to move $390,000 in street maintenance expenses to the capital projects fund, where they will be funded with debt proceeds.

Staff recommends City Council adopt (1) a resolution authorizing the City Manager to sign a new lease with DeWine Seeds –Silver Dollar Baseball, L.L.C. for the use of McCormick Field for the continued operation of the Asheville Tourists baseball; (2) a budget amendment, in the amount of $390,000, from General Fund pay-as-you-go capital funds for the Lighting and Playing Surface Replacement Projects; and (3) a technical budget amendment, in the amount of $390,000, from debt proceeds for Fiscal Year 2011-12 street maintenance expenses.

Councilman Davis said that the City owns McCormick Field and as with all its property, we must be good stewards of it. He was happy that the Asheville Tourists are in Asheville to bring quality entertainment to the entire family.

Councilwoman Manheimer said that under this new lease we are shifting several annual reoccurring costs that the City used to be paying and exchange, because McCormick Field is a City-owned facility, we will be making capital improvements. We will issue some debt in order to do that but our debt service payment will be approximately the same as what we were paying under the current lease. She said this is a good partnership for some much needed improvements to the baseball facility.

**RESOLUTION BOOK NO. 34 – PAGE 299**
**ORDINANCE BOOK NO. 27 – PAGE 324**

I. **ORDINANCE NO. 4066 - BUDGET AMENDMENT TO FUND DEMOLITION OF UP TO THREE STRUCTURES THAT HAVE BEEN FOUND AS UNSAFE,**

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**UNFIT FOR HUMAN HABITATION AND MEET THE DEFINITION OF DILAPIDATED**

Summary: The consideration of a budget amendment using $45,000 from General Fund fund balance to fund demolition of up to three structures that have been found as unsafe, unfit for human habitation, and meet the definition of dilapidated following the City of Asheville Minimum Housing Code process.

The Building Safety Department enforces Article VII of Chapter 4, of the Code of Ordinances, or our Minimum Housing Code. Section 4-217 of the Housing Code outlines a process for remedying defects that may lead to the structure being found unsafe or unfit for human habitation. The Department is responsible for enforcing the State Building Code that references General Statutes, specifically GS 160A-425 through GS 160A-432, the unsafe building statutes.

Complaints on a structure's condition can come from many different sources, such as the tenant, the neighbors, APD, AFD, social services, visible from the road by the inspector, etc. An inspector investigates the complaint. If the structure is occupied the inspector will communicate with the tenant and landlord or owner to correct the items identified. The structures that are vacant, and meet the definition of dilapidated are extremely difficult to bring into compliance. We encourage the owners to demolish the structure and to board the structure to prevent entry as a safety precaution until demolition is completed. Following the Housing Code, or in some cases the General Statutes, dilapidated structures require the owner(s) to demolish or repair within a specified time after an administrative hearing. If the order is not met, City Council can order the structure demolished and place a lien on the property. Once the property is sold, the City is reimbursed for the cost of the demolition and other associated costs such as legal service time. The property taxes are paid prior to the City's lien then any other liens are after those priorities.

Demolition contractor's bids are requested, including the Public Works Department, when the structure and work are within their scope. Over the past four years, staff has taken one commercial structure to Council for demolition and has received payment for that cost. Public Works has demolished one small single-family home where a lien was placed on the property for the costs of the landfill tipping fees and other costs. Demolition costs are fluid based upon many factors. The size, construction type, and if salvageable items are present to lower the cost for the contractor are specific to each structure. If asbestos is present, the cost will go up for the removal or for disposal of the structure in a landfill for hazardous items. Most single-family home demolitions will range from approximately $9,000 to $20,000.

The Building Safety Department must seek Council authorization for demolitions to confirm the process, that the structure meets the definition, and to authorize the funding. Funding for demolitions for at least the last ten years has come from Fund Balance. All proceeds from the lien upon the property selling are returned to Fund Balance. The Building Safety Department has several locations where the structure meets the definition of dilapidated. Our efforts have been concentrated on seeking the owners to correct the situation, collaborating with other organizations and the owner to remove or repair the structures, and to not begin the process to require Council to order the structure demolished unless all other avenues have been exhausted. We now have several single-family homes and one commercial structure that we have had no success in remedying the dilapidated conditions. Once these structures follow the legal process they will individually come back to City Council for authorization.

This action complies with the City Council Strategic Operating Plan goal to support the creation and preservation of affordably and home ownership opportunities in Asheville so that all citizens have access to safe, sufficient and affordable housing.

Pros:

- The removal of an unsafe and dilapidated structure from the community ensures that communities do not have structures that would allow children and others to enter and potentially be injured.
- Increases the appeal and potentially the tax value of the neighboring properties by the removal of a dilapidated structure.

Cons:

- The payback of a lien is an unknown time duration based upon the sale of the property.
- May impact the June 30, 2012 General Fund fund balance.

Staff is recommending that Council appropriate $45,000 from General Fund fund balance for the cost of these demolitions. As noted above, all proceeds received from the lien upon the property selling will be returned to fund balance.

City staff recommends City Council approve the budget amendment in the amount of $45,000 from General Fund fund balance to fund demolition of dilapidated structures.

**ORDINANCE BOOK NO. 27 - PAGE 326**

**J. ORDINANCE NO. 4067 - BUDGET AMENDMENT TO APPROPRIATE PARKING FUND FUND BALANCE TO PROVIDE AN EQUITY CONTRIBUTION TOWARD THE CONSTRUCTION COSTS FOR THE BILTMORE AVENUE PARKING GARAGE**

Summary: The consideration a budget amendment to appropriate $3.0 million from the Parking Fund fund balance to provide an equity contribution toward the construction costs for the Biltmore Avenue parking garage (formerly referred to as 51 Biltmore).

Construction of the new parking garage at Biltmore Avenue, which is approximately 90% complete, is ahead of schedule and on budget. The current budget for this project is $14.1 million, with funding coming entirely from debt proceeds. As reported to Council this past November as a part of the FY 2010-11 Comprehensive Annual Financial Report (CAFR) presentation, the Parking Fund ended FY 2010-11 with available fund balance of approximately $3.35 million more than the established target level.

Staff is recommending that Council appropriate $3.0 million from Parking Fund fund balance to provide an equity contribution to the Biltmore Avenue Parking Garage project. This action will reduce the amount of funds that need to be borrowed to approximately $11.1 million. Staff estimates that reducing the amount of the loan proceeds by $3.0 million will save approximately $1.2 million in interest costs over the life of the loan.

This action complies with the City Council Strategic Operating Plan goal to "Operate the City of Asheville to the highest levels of fiscal responsibility."

Pros:

- Reduces the amount of funds borrowed for the Biltmore Parking Garage Project, thereby reducing the amount of interest costs over the payback of the loan.
- Lowers the annual debt service payments, which creates greater flexibility in the Parking Operating Fund budget.

Con:

- None.

This $3.0 million appropriation will leave the Parking Fund with an available fund balance of approximately $500,000. The target level fund balance for the Parking Fund (8% of the fund's operating budget) is $151,622.

Annual debt service payments for the Biltmore Avenue Parking Garage will be reduced as a result of the proposed equity contribution. For example, staff estimates that the first year of debt service payments will go down from $ $1,140,515 to $ 889,760. This adjustment will provide greater long-term flexibility in the Parking Fund's annual operating budget.

City staff recommends City Council approve the budget amendment to appropriate $3.0 million from the Parking Fund fund balance to provide an equity contribution toward the construction costs for the Biltmore Avenue parking garage.

**ORDINANCE BOOK NO. 27 – PAGE 328**

**K. RESOLUTION NO. 12-61 - RESOLUTION APPOINTING ESTHER CARTWRIGHT TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE**

Summary: Rod Baird is one of two members of the RiverLink Board of Directors appointed to serve on the River District Design Review Committee. Mr. Baird no longer serves in that capacity, thus leaving an unexpired term until September 1, 2013. RiverLink has requested City Council to appoint Ms. Esther Cartwright, who is a seated Board member, to fill out Mr. Baird's term.

**RESOLUTION BOOK NO. 34 – PAGE 300**

**L. RESOLUTION NO. 12-62 - RESOLUTION AMENDING THE 2012 CITY COUNCIL MEETING SCHEDULE TO INCLUDE A WORKSESSION ON TUESDAY, MARCH 27, 2012, AT 3:30 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF CITY HALL**

**RESOLUTION BOOK NO. 34 – PAGE 301**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Hunt moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Pelly and carried unanimously.

## III. PRESENTATIONS & REPORTS:

**A. ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL UPDATE**

Dr. Larry McCallum, Chairman of the Board of Directors of the Asheville-Buncombe Community Relations Council (CRC), was pleased to introduce their new Executive Director Sarah Nunez. He said that are working on transparency for the governance and operation of the Council.

Ms. Nunez outlined many changes they were making as an organization to move forward. Regarding inclusion (1) they will conduct a listening tour, (2) reconnect with communities; (3) do outreach; and (4) have bilingual staff and volunteers. Accountability will include deliverables, data collection and an Audit Committee from the Board of Directors. Sustainability will include strategic planning, diversify funding, and board development. Vision will

include (1) programs that align with their mission; (2) have a broad appeal to all citizens of Asheville and Buncombe County; (3) build trust; and (4) build respect.

Dr. McCallum and Ms. Nunez responded to various questions/comments from Council, some being, but are not limited to: will the services and the programs be similar to what has been offered in the past and will they offer any new services; is Buncombe County committed to funding the CRC and at what level; has the community been bringing the CRC fair housing concerns and if so, how is the CRC handling those concerns; approximately how many fair housing referrals are made weekly; what types of data will be collected; what is the purview of the Audit Committee; what is the CRC's perception of the needs of the community; and how does the CRC hope to affect change in eliminating discrimination in our community.

Mayor Bellamy suggested Ms. Nunez provide Council with their Strategic Operating Plan, showing their benchmarks going forward.

Mayor Bellamy thanked Dr. McCallum for his work on the CRC and Ms. Nunez for the hard work she has accomplished since recently been appointed Executive Director.

**B. EBLEN TOY RUN**

Mr. Bill Murdock, representing the Eblen Toy Run, and Mr. Steve Kaser, representing Smoky Mountain Town Run, presented City Council with a certificate of appreciation for their support for the Smoky Mountain Toy Run. The Eblen St. Nicholas Project stated 15 years ago with 12 children being assisted at Christmas. Two years ago they assisted 325 children and now through partnership like the City of Asheville, last Christmas they assisted 6,000 children. Mayor Bellamy, who invited Building Safety Director Robert Griffin and Police Chief William Anderson to accept the Certificate with her, was pleased to accept it on behalf of the City of Asheville.

**C. QUARTERLY REPORTS**

**Finance Committee Chair Report**

Vice-Mayor Manheimer, Chair of the Finance Committee, updated Council the progress and achievements made by the Finance Committee during the second quarter of the fiscal year.

**Planning & Economic Development Committee Chair Report**

Vice-Mayor Manheimer, Chair of the Planning & Economic Development Committee, updated Council on Committee actions through the second quarter of our fiscal year (October through December, 2012).

**Public Safety Committee Chair Report**

A report submitted by Councilman Bothwell, Chairman of the Public Safety Committee, was provided to Council on some major accomplishments during this quarter.

At the suggestion of Mayor Bellamy, it was the consensus of Council to ask that the Public Safety Committee look for an opportunity to name an existing or future piece of City-owned property in memory of our fallen firefighter Capt. Jeffrey Bowen, along with a policy for any employee who loses their life on the job.

**Strategic Operating Plan**

Assistant City Manager Jeff Richardson said that the Asheville City Council identified short and long term goals at the February, 2011, strategic planning retreat and staff is providing its quarterly updates on progress of the five key focus areas.

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City Council asked City staff to provide quarterly updates on key strategic initiatives associated with the five primary focus areas of the City's Strategic Plan. Staff has tracked projects using performance indicators and measurements through the Fiscal Year 2011-12.

This report outlines key operational updates during the first and second quarters of our fiscal year (July 2011 – December 2011).

*Affordable*

- Affordable Housing Fee Rebates: As part of an effort to make housing in Asheville more affordable, the Water Resources Department administers an Affordable Housing Rebate Program. This program provides a 50% rebate on water fees if the constructed house or apartment meets the definition of "affordable". During the first two quarters of this fiscal year, there have been 43 rebates, totaling $59,805. This is a notable increase from the same quarters of the previous fiscal year: $27,935.

- Community Development: Through the first two quarters of this fiscal year, there were 163 new affordable housing units produced, which included 31 new home ownership units and 132 new affordable rental units. A total of 50 housing units were preserved through repair or rehabilitation. Twenty four households became first time home buyers with HOME and CDBG assistance; 179 households received rental assistance, which helps prevent instances of homelessness.

- Temporary Use Amendment: This amendment expands the temporary use standards to allow food vendor sales on institutional properties in residential districts. This would allow a small produce vendor to set up on a church or school property in neighborhoods where they may be able to better reach underserved communities. This amendment also seeks to address an enforcement disparity by requiring permits for certain temporary uses in commercial areas.

- Sign Code Amendment: This is a collection of miscellaneous amendments designed to update the standards to address changing practices and businesses. This amendment includes increased signage options for special events, campaign signs, temporary signs, development signs, and strengthens standards for digital billboards.

*Fiscal Responsibility*

- Automated Meter Reading Project: The installation of automatic water meter devices began in the first quarter of fiscal year 2011. To date over 28,000 total devices have been installed (50% of all City meters). The cost to this point is $5 Million, which included the new meters, the reading devices, labor and other miscellaneous materials.

- Diversity in Revenue Stream: Wrist bands sold during events at the U.S. Cellular Center generated $100,000 of new revenue during the first two quarters of this fiscal year.

*Job Growth and Community Development*

- Workforce Development: (City Health Clinic Expansion) The City has made considerable strides in attracting and retaining quality employees. The City Health Services Clinic has opened its new location at 155 Biltmore Avenue, with one part-time Physician Assistant hired. Through the direction of City Council, staff assembled a Blue Ribbon Healthcare Task Force to learn more about employee benefits and provide recommendations for benefits during the current fiscal year. As consistent with those recommendations, healthcare costs sharing has been implemented, as well as a health premium differential for participation in the wellness program.

(Youth Development)
At a time when more than 70 percent of teenagers are unemployed, the City of Asheville Youth Leadership Academy (CAYLA) is committed to investing in youth and expanding available opportunities for them to succeed. Each spring, 30 students at Asheville High School are selected for CAYLA. In addition to volunteer projects and group workshops, these students are placed in diverse work environments, to include nine City departments and a growing array of local businesses and nonprofit agencies. To date, 100% of CAYLA graduates have been accepted to college (with 93% currently attending); participants have received over $500,000 in merit scholarships (not including Pell Grants); over 2,000 hours of community service have been completed since 2007.

(Staff Training)
Lastly, there has been a coordinated effort to provide high quality trainings to City staff. In total, staff and outside consultants provided 61 classes to 477 attendees during the first and second quarter of this fiscal year. Examples of trainings include sessions on the City's Core Values (e.g. ethics and diversity), policy-specific sessions (e.g. workplace harassment), leadership and time management.

- Downtown Development: The public-private partnership of Aloft Hotel (51 Biltmore Avenue) is approximately 85% complete, slightly ahead of schedule and on budget.

- Limited Fees: Staff continues to support business by limiting taxes, fees and regulations. During the first two quarters of this fiscal year, 52% of all parking citations in the central business district were warnings.

- Homeless Initiative: During the last two years, this initiative prevented or ended homelessness for 669 people in 320 households. Since January 2011, over 400 people accessed permanent, supportive housing.

- Community Center: As the first Asheville community center opened since the Montford Center in 1974, the new Dr. Wesley Grant Sr. Southside Center recognizes a great local leader and an historic cultural neighborhood. This is the City's first LEED Certified building and staff is currently applying for LEED Platinum status. Additionally, proceeds from the recent sale of the Reid Center will be invested in the next phase of the Grant Center.

- Development Rebates and Permits: City Council approved the use of *Change-out Rebates* during the 2009 fiscal year. These allow residents over the age of 65 to receive a rebate when contracting work on a single family home. There have been 23 rebates issued this fiscal year, totaling $1,150.

  Lastly, the table below outlines permitting activity during the first two quarters of the previous three years.

| | **July - Dec 2009** | **July - Dec 2010** | **July - Dec 2011** |
|---|---|---|---|
| Single Family | 94 | 108 | 94 |
| Multi Family | 1 | 17 | 14 |
| Townhouses | 72 | 27 | 12 |
| Duplexes | 0 | 0 | 0 |
| Commercial | 30 | 31 | 22 |
| Residential Additions/Alterations | 556 | 641 | 430 |
| Commercial Additions/Alterations | 707 | 1007 | 799 |

| | | | |
|---|---|---|---|
| Mobile Homes | 7 | 5 | 1 |
| | | | |
| Total Building Permits Issued | 1467 | 1836 | 1372 |
| **Total Valuation of Permits** | **$116,694,831** | **$111,010,090** | **$93,788,009** |

*Green and Sustainable*

- Technological Efficiencies: The City of Asheville's green PC & data center reduction project reduced energy consumption while preserving a high level of service to customers. Through a large-scale computer upgrade project, the City is expecting to realize a 72% - 82% reduction in computer energy use.

  The first phase of the initiative downsized and modernized the City's 20-year-old data center through a combination of virtualization and cloud computing adoption. The second, concurrent phase, changed the way that the City handled PC desktops in two ways: sizing, and auto-shutdown.

- LED Streetlight Replacements: The City is currently in the second phase of LED streetlight replacements. This phase includes replacing streetlights in the Kenilworth neighborhood (100% complete), West Asheville (95% complete) and parts of Oakley (starting in mid March). To date, there have been 3,200 streetlights installed.

- Public Transit: When compared to the previous fiscal year, there has been a 9.8% reduction in fuel usages (approximately 21,700 gallons). This is largely due to the addition of five new buses, an effort to reduce idling, the streamlining of bus stops, eliminating the Weaverville route and merging two existing routes.

*Safe*

- Nuisance Court: As you can see from the table below, there has been a considerable increase in Nuisance Court activity when compared to the same quarters of the previous fiscal year.

| | **July - Dec 2010** | **July - Dec 2011** |
|---|---|---|
| New Cases | 114 | 189 |
| Community Service Hours Completed | 1,258 | 3,222 |

- Graffiti: The City's graffiti program currently consists of 30 individuals, each doing one month of community service through the Nuisance Court. Their daily outings focus on downtown, public property. In addition to sidewalk cleaning and trash pickup, this program removed 4,236 graffiti tags during the first two quarters, up from 3,318 compared to the same quarters of the last fiscal year.

- Americans with Disabilities Act (ADA) Compliance: The Public Works Department continues to install and maintain ADA measures in public right-of-ways. During the first two quarters of this fiscal year, 27% of all known ADA issues were addressed.

- Community Programming: The Parks, Recreation and Cultural Arts Department offers a variety of community programs that are safe, well maintained and affordable. Seven programs focus specifically on at-risk youth:

  School-age Child Care Program
  Therapeutic Recreation Program
  Center Afterschool/Teen Program
  Outdoor Adventure
  Youth Athletics

Aston Tennis Youth Programs
Skatepark Youth Programs

During the first and second quarters of the fiscal year, these programs have provided 6,111 service hours to 4,690 participants (cumulative participation).

- Gang Violence Prevention Programs: Gang Violence Prevention Grants continue to be used for anti-gang programs in the community. During the second quarter of this fiscal year, 416 hours of programming was completed, reaching 211 youth in four schools.

*Multimodal Transportation*

- Sidewalks: As the table below reflects, sidewalk repairs have grown substantially when compared to the previous fiscal year. Sidewalk installation during the 2010 fiscal year is relatively large due to increased financial resources through American Reinvestment and Recovery funds.

| Sidewalk (Linear Feet) | July - Dec 2010 | July - Dec 2011 |
|---|---|---|
| Repaired | 728 | 1,479 |
| Installed | 4,934 | 2,585 |

- Multimodal Mapper: Staff has worked to leverage existing funds in pursuing pedestrian and bike friendly community opportunities. The Multi-Modal Mapper "Active Mapper" is now available to citizens at http://gis.ashevillenc.gov/mapAsheville/activemapper. This simple webGIS application allows users to easily locate features such as sidewalks, greenways, multiuse paths and bicycle lanes.

- AT&T Surface Parking Lot: The City opened a new 45-space parking lot on O.Henry Avenue, on the AT&T property. The lot is leased from AT&T for five years and is equipped with solar-powered multi-space meter machines. This significantly increases our ability to address the parking concerns in the Grove Arcade area.

City Council has asked for an activity report on a quarterly basis of the Domestic Partner Registry. Since the Registry began on May 2, 2011, a total of 31 couples have registered.

This information is to update City Council on key operational initiatives specific to the Strategic Operating Plan. No action is necessary at this time.

Upon inquiry of Mayor Bellamy, City Manager Jackson said that we have been experiencing an increase of graffiti on private property, which is beyond our influence to remove quickly. He suggested Chief Anderson work with the Public Safety Committee to evaluate past policies, current directions and the effectiveness of not only what we are doing, but look to see if there are other new trends. Mayor Bellamy said that we should involve the community as there have been community members who have expressed a desire to be part of the solution, in particular Mr. Carr with Tops for Shoes.

City Manager Jackson briefly updated Council on his recent trip to a National League of Cities Committee meeting. In summary, Council should be proud of the goals they have set in making Asheville sustainable and vibrant.

**Financial Report**

Budget Manager Tony McDowell provided Council with the following financial information which reflects the City's overall financial position for the fiscal year through December, 2011.

***Amendments.*** The General Fund budget presented in the second quarter report reflects: (1) the adopted budget of $87,645,955; (2) a technical amendment adjusting the fleet external charge budget, and; (3) seven budget amendments totaling $660,803, none of which involved an appropriation from fund balance.

| | |
|---|---|
| Adopted Budget | 87,645,955 |
| Fleet Technical Change | (1,221,594) |
| Budget Amendments: | |
| NCDENR Park Recycling Bin Grant | 30,000 |
| NC Arts Council Grassroots Arts Grant | 49,850 |
| Buncombe County/Changing Together Partnership | 63,000 |
| Debt-Funded Purchase of Computer Equipment | 350,000 |
| State Haz-Mat Grant | 25,000 |
| Federal COPS Hiring Grant | 118,543 |
| State Senior Opp. Center/Harvest House Grants | 24,410 |
| 12/31/2011 Budget | $87,085,164 |

***Revenues.*** Through December 30, 2011, the City has collected $50,756,337 in General Fund revenue, which represents approximately 58.3% of the total General Fund revenue budget. Revenue collections through the first six months are almost identical to collections at this same point in the previous fiscal year. Staff received property tax data from Buncombe County in January that showed that the FY 2011-12 tax levy grew by only 1.3%. As a result, staff has revised downward the property tax revenue estimate for the current year. Sales tax revenue is on track to exceed budget. Staff projects that state utility tax revenue and several other smaller revenues will fall short of budget in the current year based on FY 2010-11 actuals. Overall, staff is currently estimating that ***total FY 2011-12 General Fund revenue will come in under budget by $580,000 or 0.67%.***

***Expenditures.*** General Fund expenditures through December 31, 2011 total $40,102,673 or 46.0% of the budget, which is typical for this point in the fiscal year. Fuel expenses continue to run ahead of where they were one year ago and are expected to have an impact on the budget. In addition, Fire Department overtime expenses are running ahead of budget. Fuel and overtime costs will likely require technical adjustments in the FY 13 budget to reflect actual expenditures. ***Savings in other areas of the budget, such as full time salaries and utilities, are expected to offset the projected over expenditures in fuel and fire overtime. Staff also continues to seek opportunities to generate additional savings by closely monitoring expenses and by maximizing efficiency in operations. Staff anticipates being able to generate the necessary expenditure savings to fully offset the minor revenue shortfall.***

***Fund Balance.*** The City ended FY 2010-11 with available fund balance of $13.18 million, which equated to 15.2% of FY 2010-11 expenditures. ***FY 2011-12 available fund balance is expected to remain at 15.2% of estimated expenditures.***

In response to Councilman Smith, City Manager Jackson said that staff will provide Council with the information on where the vehicle replacements are being made and the percentage that are hybrid and alternative fuel.

Councilman Smith spoke in support of the big box van that was converted into a mobile art lab for the community. It has served thousands of people in its first year and has been one of the most cost effective successful popular programs we've ever seen come out of the Parks, Recreation and Cultural Arts Department.

**D. TRANSIT MARKETING PLAN UPDATE**

Transit Manager Mariate Echeverry provided Council with a Transit Marketing Plan update regarding the effects of gas prices in transit. Considerations taken in account should be the transit operations, measures to offset the cost, and how to help the community. She showed a graph of the rise in fuel costs from $1.23 in 2003 to $3.79 in 2011. She said that there has been a 4% increase in ridership from July 2011 through January 2012.

Measures to offset the cost include (1) fleet changes (a) addition of five hybrid buses to the fleet (March 2011); and (b) nine more buses are coming in November 2012; and (2) route efficiency (a) elimination of Weaverville route; (b) merging of Route 28 and 29 in new 170; (c) merging of route 3 with 52; (d) streamling bus stops; and (e) reducing idling.

We can help the community by setting up Park and Rides along transit routes; partner with larger employers to educate their employees about transportation choices; create a card with basic transit information, as well as bike and pedestrian information; use the Transit Master Plan implementation campaign to reach out to people; use social media to community the benefits of riding the bus; partner with Buncombe County TV; sponsor bike classes; offer bike and pedestrian trip planning (Google maps); promote carpooling: Share the Ride NC; Promote Strive Not To Drive; and create a pamphlet related to vehicle maintenance to conserve fuel.

Councilman Hunt felt that Council should pay particular attention to the marketing component of the transit budget.

In response to Councilman Smith, Ms. Echeverry explained the several funding partnerships in acquiring hybrid buses.

Councilman Smith, liaison to the Transit Commission, was pleased to announce the new Chair of the Transit Commission Julie Mayfield and briefly explained the new route structure.

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING A REDUCTION TO THE SQUARE FOOTAGE THESHOLD THAT TRIGGERS A MAJOR WORKS DESIGN REVIEW BY THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

**ORDINANCE NO. 4068 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING A REDUCTION TO THE SQUARE FOOTAGE THESHOLD THAT TRIGGERS A MAJOR WORKS DESIGN REVIEW BY THE RIVER DISTRICT DESIGN REVIEW COMMITTEE**

Urban Planner Nate Pennington said that this is the consideration of an amendment to the Unified Development Ordinance regarding a reduction to the square footage threshold that triggers a major works design review by the River District Design Review Committee (RDDRC). This public hearing was advertised on March 2 and 9, 2012.

Development in the area identified as the River District has increased in the past few years. New construction, demolitions and redevelopment are transforming an area once known for industry and manufacturing into a vibrant area of mixed uses in and surrounding the well established River Arts District – home to a number of thriving artist's studios and galleries.

With all the new activity, concern has been raised by the RDDRC that the existing square footage threshold for major works review is too large. The most recent concern relates to a newly constructed building on the old Long John Silvers site at 14 Swannanoa River Road. It was under the threshold for review by the Committee (Zoe's Kitchen is 2704 square feet) and thus the RDDRC did not have an opportunity to provide comments to the developer. RDDRC review of new structures is limited to those of 5,000 square feet or more. Smaller structures are reviewed

at a staff level as a minor work, although the staff only has the ability to refer to and make suggestions from the River District Design Review Guidelines. Because the RDDRC believes it would be helpful for the City and for developers in the River District to have the benefit of their reviews, they have proposed the expansion of their review to smaller structures and for a larger geography that includes zoning other than River District. The RDDRC is not, however, proposing to change their directive for mandatory review, but voluntary compliance program.

The RDDRC recommended that the threshold for major works review be lowered to 500 square feet. The original recommendation also included a request to expand the geographical review area; however, consideration of this request has been postponed until the City has implemented the new permitting software and tracking the review area can be more effectively performed. The proposal for the reduced review threshold was presented to the Asheville Area River Redevelopment Commission (AARRC) on November 10, 2011 and the Council's Planning and Economic Development (PED) Committee on November 15, 2011. While both generally supported the rationale for the changes, the PED Committee expressed a concern that the proposed 500 square foot threshold is too low and will subject too many small projects to a required review by the RDDRC. Both groups also supported delaying the consideration of the geographical change until the new software can be implemented (Fall/Winter 2012). Implementation of that change would be very difficult for the staff until the new computer software is available.

The Planning and Zoning Commission reviewed this request at their January 4, 2012, meeting. After hearing a presentation and recommendation from staff that the amendment be approved at a 1,500 square foot threshold, discussion ensued amongst the members regarding an appropriate square footage threshold for major works review. A motion was made to reduce the square footage threshold for major works design review from 5,000 square feet to 1,500 square feet. This motion was seconded but failed on a 3-4 vote. After further discussion, a new motion was made to reduce the threshold to 2,500 square feet. This motion was seconded but also failed on a 3-4 vote. As a result, the proposal is carried forward to the Council without support from the Planning and Zoning Commission.

This proposal does not directly relate to the goals outlined in the City Council Strategic Operating Plan but is most closely aligned with the goal for "job growth and community development" by balancing business needs with community needs and concerns.

Pros:

- Provides opportunity for additional input related to design review for new construction that would have previously been reviewed on a staff level.
- Provides for a more consistent design style in the river district.

Con:

- Subjects smaller projects to formal design review and will require more staff resources for a more complex review process.

Increased review times for projects now deemed as major works would be likely, although the amount of additional staff time needed is expected to be relatively modest.

The Planning staff shares the concern of the PED Committee regarding the 500 square foot threshold. As an alternative, the staff recommends a 1,500 square foot threshold along with an exemption for accessory structures (decks, etc.) and additions to a building primarily occupied by mechanical, electrical and communications equipment (elevator/stairway shafts, HVAC, etc.). Approval of the change to a 1,500 square foot threshold is recommended.

Mayor Bellamy opened the public hearing at 6:31 p.m.

Mr. Terry Meek, Chair of the RDDRC, explained how it would be helpful for the City and for developers in the River District to have the benefit of their reviews. The RDDRC believes that

the mandatory review but voluntary compliance is still the best approach. They do not want to saddle development with any undue delays or unnecessary additional costs, but they see their review as an opportunity to have more eyes on the project and be proactive. He then gave the Commissioners a brief report on the requested revisions to the geographical review area. He requested Council approve both the reduction in the square footage threshold and the geographical change.

Rev. Christopher Chiaronmonte said that this amendment will only allow the City more control.

Mayor Bellamy closed the public hearing at 6:44 p.m.

Mayor Bellamy said that staff's report at this time is for the reduction on the square footage issue and felt it would be appropriate for them to bring back a separate report on the geographical change once the new computer software is available.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No. 4068 reducing the square footage threshold that triggers a major works design review by the RDDRC to 1500 sq. ft. along with an exemption for accessory structures (decks, etc.) and additions to a building primarily occupied by mechanical, electrical and communications equipment (elevator/stairway shafts, HVAC, etc.). This motion was seconded by Councilman Smith and carried unanimously.

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It was the consensus of Council to consider the New Business items prior to the Unfinished Business item.

**V. NEW BUSINESS:**

**A. BOARDS & COMMISSIONS**

Regarding the Board of Adjustment, the following individual has applied for the vacancy: Dimi Kulakov. Because there are two alternate openings and one applicant, it was the consensus of Council to re-advertise in two months.

Regarding the Homeless Initiative Advisory Committee, the following individuals have applied for a vacancy: Debbie Metcalf, Micheal Woods, Michael Akers, Timothy Sadler, John Spears and Charles Barber. It was the recommendation of the Boards & Commissions Committee to re-advertise in two months.

Regarding the Community Relations Council (CRC), the City has four appointments to make, including one possible reappointment of Mike Hahn. The following individuals have applied for a vacancy: Charles Rosenblum, Kathryn Liss, Itiyopiya Ewart, Rachael Tanksley-Russell, Francis Dibari, Melissa Blazen and Carol Rogoff Hallstrom. The CRC recommended Council appoint Charles Rosenblum, Rachael Tanksley-Russell and Francis as they feel those folks will bring the skills and gender to balance the Board. It was the consensus of Council to interview Charles Rosenblum, Rachael Tanksley-Russell, Francis Dibari, Kathryn Liss, Itiyopiya Ewart, Carol Rogoff Hallstrom and Mike Hahn on April 24 (taking into consideration the recommendations by the CRC) after Council reviews the CRC's Strategic Operating Plan. Ms. Sarah Nunez, Executive Director of the CRC, explained that their Strategic Operating Plan will not take place until next fiscal year and hoped that Council would appoint members as soon as possible they need leadership to help guide the CRC.

## VI. UNFINISHED BUSINESS:

### A. UPDATE ON SENATE BILL 183 (SELECTIVE VEGETATION REMOVAL)

Due to a conflict of interest, Councilman Davis moved to recuse Vice-Mayor Manheimer from participating in this matter. This motion was seconded by Councilman Hunt and carried unanimously. At this time, Vice-Mayor Manheimer left the Chamber.

City Attorney Oast said that since the Council meeting of February 28, 2012, he has received and reviewed several documents regarding the new law allowing removal of vegetation in front of and around billboards, and have had several discussions with attorneys and others interested in this issue.

**I. Brief History and Effect of Law:**

A. Senate Bill 183 was adopted by the General Assembly this summer (N.C. Sess. L. 2011-397). In essence, that law allows for expanded "cut zones" in front of outdoor advertising signs (billboards) along some State controlled roads. The law also provides for non-removal of certain species of trees, and for replanting.

B. Pursuant to the law, temporary rules were to be promulgated by the North Carolina Department of Transportation to administer the SVR process. These rules became effective on March 1. On and after this date, billboard owners may apply for SVR permits.

C. Municipalities have the ability under the law to review and comment on SVR permit applications within their jurisdiction. Asheville has requested the local district office of the DOT to make SVR applications available for the City's review.

**II. What is Occurring Locally:**

A. DOT has issued temporary rules; we have obtained a copy of them.

B. In conversations with other cities, and the League of Municipalities, we have learned of some issues to be aware of in our review of these SVR permit applications. These conversations are continuing.

C. City Planning, Transportation, and Legal staff have met to review which roads are affected by the new law.

D. City staff will soon be meeting with local DOT staff to ensure consistent understanding of which roads and signs are covered by the new law and the process by which the City will be notified and allowed to express any comments on the SVR permit applications.

E. 15 SVR permit applications have been received for signs in Buncombe County; three of those are located in the City's jurisdiction.

**III. Lawsuit Challenging New Rules:**

A. On February 29, a lawsuit was filed by Scenic NC, Inc., through the Duke Environmental Law and Policy Clinic.

B. The basis of the legal challenge is that DOT did not follow the proper process in developing and promulgating the new rules, including inadequate notice and some other procedural issues. There were no hearings locally.

C. So far, no cities have signed on as plaintiffs in this matter. Some of the sign companies have been allowed to intervene. A temporary restraining order was applied for, but was not allowed. In part, this was because DOT did not plan to issue SVR permits immediately, but the permits will issue soon.

**IV. Issues in Need of Further Review:**

A. Clarify which roads and signs the new law applies to.

B. Clarify whether the new law applies within the extraterritorial jurisdiction.

C. Review and understand the new rules.

He said that we continuing to research and review this matter, and to discuss the issues with the Duke Environmental Law and Policy Clinic, the League of Municipalities, and representatives of other cities.

He said that Scenic NC has requested for Asheville for assistance, which may come in the form of intervention in the civil action as a party. He felt that any further discussion should be in closed session.

Ms. Judy Mattox, Chair of the local Sierra Club, provided Council with a copy of "Civil Bill of Costs" and a letter dated March 13, 2012, from Ryke Longest, Director of Duke Law, to City Attorney Bob Oast, which reads "Thanks so much for your interest in intervening in the litigation initiated by Scenic NC against the N.C. Department of Transportation (ND DOT) regarding the temporary rules that were made effective March 1, 2012. NC DOT and the Outdoor Advertising Association have asked the Court to dismiss our lawsuit altogether at a hearing currently scheduled for March 19, 2012. If the City wants to intervene and be heard on the NC DOT's Motion to Dismiss, time is running out. If there is a need for more time for the City to file, I will need to file a motion to continue the Hearing by Thursday afternoon at the latest. If the City decides that it intends to seek to intervene, I will be happy to seek a continuance of the Hearing. I will need to get a letter from you addressed to me asking me to see a continuance for that reason. I would need such a letter by Thursday at noon sent to me and then I would file a Motion for Continuance before 5:00 on Monday, attaching the letter to my Motion." She urged Council to intervene. She said the costs would be $200 cost to file a complaint and attorney fees. If you lose the case you may be asked to share in the court costs, which they felt would be under $1,000. She said there are 200,000 trees in our state that are at risk.

At this time, Vice-Mayor Manheimer re-entered the meeting and continued to participate.

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. David Garver supported the Asheville Values Assessment and urged Council to bring greater public awareness to the issues raised in the report, and for Council to become even more a leader in environmental responsibility. Mayor Bellamy said that she would make arrangements for Council to receive a copy of the report.

Rev. Christopher Chiaronmonte was concerned with the way Asheville has treated the homeless.

Mr. Carl Silverstein, Executive Director of Southern Appalachian Highlands Conservancy, felt that since the conversation easement on the watershed property was adopted over 16 years ago, there have been some innovations on easements that improve the practice of stewardship of properties. He asked that Council be open to amending the easement. It was the consensus of Council to refer this to the Planning & Economic Development Committee for review.

Ms. Judy Strong felt that discretionary activities such as baseball and the golf course should be self-sustained.

Councilman Davis urged the community to support the UNC-Asheville Men's Basketball Team in their play-offs this week.

Councilman Davis thanked all the community volunteers, sponsorships, Economic Development Director/Civic Center Director Sam Powers, the Sports Commission, UNC-Asheville, staff at UNC-Asheville, staff at the US Cellular Center, City staff, and everyone associated with the Southern Conference. He said it was a very successful weekend from an economic standpoint and from a civic standpoint. Mayor Bellamy was also pleased and thanked the team of people who volunteered, including all the assistance from the Asheville Independent Restaurant Association. She was very pleased with the renovations of the US Cellular Center.

Councilman Smith mentioned that a report recently came out ranking the Asheville Metropolitan Statistical Area as third in the nation for food hardship. He pointed out that the Asheville Metropolitan Statistical Area consists of Madison, Buncombe, Haywood and Henderson counties – a broad number of governments, people and systems. The Asheville-Buncombe Food Policy Council has been putting together policy suggestions which they hope will be a parallel process with the Food Council so we can take a comprehensive look at this and come up with some solution.

**Closed Session**

At 7:30 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: Scenic NC Inc. and the N.C. Dept. of Transportation. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authorization is contained in G.S. 143-318.11(a)(4); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 8:30 p.m., Councilman Smith moved to come out of closed session. This motion was seconded by Councilman Hunt and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 8:30 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – March 27, 2012 – 3:30 p.m.
First Floor North Conference Room

Worksession

Present: Vice-Mayor Esther E. Manheimer, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Terry M. Bellamy

**General Fund Operating Budget**

Director of Finance & Management Services Lauren Bradley reviewed with Council the budget process calendar; General Fund Revenues, 10-year property tax rate trend; and General Fund Expenditures. She pointed out other financial presses that (1) Asheville supports a larger population than its residential population suggests; (2) slow economic recovery; (3) limitations on annexation; and (4) limited opportunity to diversity revenue sources. Ongoing opportunities include (1) opportunities to promote urban scale, infill growth; (2) continuing to provide high quality public services that support a high quality of life; continue to attract people and business growth to Asheville; and (3) continuing to seek partnerships on projects with regional impact. Tool and process include setting the strategic vision for the City; setting the annual property tax rate; determining the scope of public services; determining the level of investment in public infrastructure; economic incentives; and land use planning.

She reviewed the revenue and expenditure assumptions, along with the Fiscal Year 12-13 expenditure obligations. At this time, she said that staff is asking for feedback from Council so they can build it into the budget.

The City Council Finance Committee received a preview of the FY 12-13 General Fund Operating Budget Briefing at its meeting on Tuesday, March 20, 2012. At that meeting, the Committee requested additional information on a few items included on the "Expenditure Options" list in the presentation and staff has provided that supplemental information to the full City Council.

Ms. Bradley responded to various questions/comments from Council and those which could not be answered immediately will be provided to the full Council. Some included the impact of fire staffing on their budget; how much the fuel cost is for cars vs. large vehicles; are alternative fuel vehicles being looked at when fleet is replaced; what is the reoccurring costs vs. the one-time capital expense on reinstating vacuum leaf collection.

Several comments/questions were raised by Council, some being, but are not limited to: reinstating the vacuum leaf collection will be discussed at the Capital Improvement Plan worksession on April 10, along with options; the Economic Development Commission is actually requesting $60,000, not $50,000; can the form based code cost be spread over multiple years; request staff contact Mountain Housing Opportunities regarding funding for the Eagle-Market Street Project; question of whether the Business Improvement District contribution will be needed in the first year; interest by Council to have a two-year plan (with a portion this year) to raise the Housing Trust Fund allocation back to $600,000 a year; interest by Council to implement transit service on Sundays (understanding it is restricted to the areas with the highest routes); and request to look at the WNC Nature Center allocation.

It was the consensus of Council to build in a minimum of $500,000 for employee compensation.

**Strategic Operating Plan**

City Council reviewed the proposed Fiscal Year 2012-13 Strategic Operating Plan, by reviewing completed and ongoing goals. It was the consensus of Council that the Strategic Operating Plan captured City Council goals for FY 2012-13; therefore Ms. Bradley said that staff will bring back a resolution to adopt the FY 2012-13 Strategic Operating Plan at the April 10, 2012, meeting.

Councilman Pelly moved to continue the budget worksession until 3:30 p.m. on Tuesday, April 10, 2012. This motion was seconded by Councilman Hunt and carried unanimously.

Tuesday – March 27, 2012 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor Esther E. Manheimer, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Terry M. Bellamy

**PLEDGE OF ALLEGIANCE**

Vice-Mayor Manheimer led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Pelly gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION HONORING THE UNC-ASHEVILLE BULLDOGS**

Vice-Mayor Manheimer read the proclamation honoring the UNC-Asheville Bulldogs. She said that the joint City-County proclamation was presented to the Bulldogs at a reception held earlier in the day.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 13, 2012**

**B. RESOLUTION NO. 12-63- - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH HENDERSON COUNTY TO LEASE FIVE TRANSIT VEHICLES**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Henderson County to lease five transit vehicles.

As a result of the 2000 Census, the French Broad Metropolitan Area was reclassified from a non-urbanized area to an urbanized area with a population greater than 200,000 persons and now includes municipalities in Buncombe, Haywood, and Henderson counties. After the reclassification, Henderson County's transit system became part of the transit systems operating in the overall urbanized area. The Federal Transit Administration (FTA) named the City of Asheville the designated recipient and as a result, the City of Asheville oversees all of the FTA

funding, including reporting, administration and procurement of goods. The City of Asheville and Henderson County have signed a sub-recipient agreement that specifies how the funds are disbursed. The City of Asheville is accountable to the FTA regarding the use of all FTA funds and owns all the capital items that Henderson County purchases with these funds.

As per Henderson County's request, the City of Asheville conducted a procurement process and ordered five transit vehicles. Three of those vehicles are paid with the American Reinvestment and Recovery Act funding; the other two vehicles are paid with a combination of 5307 Urbanized Area Formula Grant, North Carolina Department of Transportation and Henderson County's funding; these vehicles will be used to serve the County's service area and will be operated by Apple Country Transit.

In order for the County to receive the buses, a lease agreement, stipulating the terms and conditions to operate these vehicles, must be signed by both parties as required by FTA. The lease agreement also details how the County will reimburse the City for those two vehicles that require local match.

There is no cost obligation for the City with this action other than staff time to accomplish the task.

This action complies with the current City Council 2011-12 Strategic Operating Plan within the fiscal responsibility focus area by operating the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- The lease agreement is an administrative step required by the FTA that protects the City's interests as designated recipient of Federal funds.
- There is **no** cost obligation for the City of Asheville other than administrative expenses.

Con:

- The City of Asheville is responsible for administrative expenses including staff time to oversee the project for the duration of such, approximately seven years.

There is no direct fiscal impact to the City of Asheville, however the City's cost of administering the project is not recovered.

City staff recommends that City Council approve a resolution authorizing the City Manager to enter into an agreement with Henderson County to lease five transit vehicles.

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**C. RESOLUTION NO. 12-64 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT WITH THE ASHEVILLE BOARD OF ALCOHOLIC CONTROL FOR THE PREMISES AT 179 S. CHARLOTTE STREET**

Summary: The consideration of a resolution authorizing the Mayor to enter into a Lease Agreement with the City of Asheville Board of Alcoholic Control for real property located at 179 S. Charlotte Street.

The property at 179 S. Charlotte Street has been in operation as an ABC Store since 1984. The property is improved with a brick building measuring 3406 square feet on a 0.84 acre lot. At this time, the Board of Alcoholic Control has offered to enter into a lease that is consistent with market based pricing, as follows:

(1) Term of five years

(2) Annual rental fee at an initial rate of approx. $46,000 per year with 3% annual increases
(3) Lessee to pay all utilities and maintenance associated with premises
(4) Both parties have the option to terminate the lease at 180 days written notice.

In order to achieve market-based pricing, City staff established the rate by gathering and comparing lease rates of similar size and location within the Asheville market. The rental rate is consistent with area fair market value for this type of building and use at $13.51 per square foot per year. All proceeds of this lease benefit the Community Development Block Grant budget as Program Income.

The Notice of Intent to enter into a Lease Agreement with the City of Asheville Board of Alcoholic Control was published on March 16, 2012, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the Lease Agreement is being requested.

This action complies with the City Council Strategic Operating Plan by contributing to fiscal responsibility. Strategic real property management, through the renewal of lease agreements, presents the City with revenue enhancements.

Pros:

- Enhanced revenue through the lease fee, to benefit the Community Development Block Grant program as income
- The City of Asheville Board of Alcoholic Control is a consistent and well established tenant in that location

Con:

- The City of Asheville Board of Alcoholic Control distributes overall net proceeds to the City of Asheville and Buncombe County based on 75% and 25% split. An increase in the rent may have a modest effect of the net distribution that contributes to the City's General Fund.

The proposed increase to the lease amount will be built into the upcoming budget cycle for the Community Development Block Grant FY2012-2013 budget. During the next four subsequent years, the lease rate will increase by 3 percent annually. Over the life of the five year lease, the city will realize more than $244,000 in CDBG Program Income. Given the increase in rent, there may be a slight decrease in the Board's distribution to the City's General Fund, since an increase in operational costs such as rent may minimally impact the overall net proceeds.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute the lease agreement with the City of Asheville Board of Alcoholic Control on behalf of the City of Asheville.

**RESOLUTION BOOK NO. 34 – PAGE 303**

**D. RESOLUTION NO. 12-65- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH FLETCHER GRADING CONTRACTORS FOR THE NORTH LOUISIANA AVENUE SIDEWALK IMPROVEMENTS PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a contract in the amount of $192,187.25 and any change order within the budgeted amount with Fletcher Grading Contractors for the project known as North Louisiana Avenue Sidewalk Improvements – Emma Road to Emma Elementary School, City of Asheville Project # ENG-08-09-002.

The City of Asheville will receive $100,000 from HUD through a CDBG grant and $187,500 from FTA through a JARC grant to fund the project. A formal request for bids was issued on February 10th, 2012 and bids were opened on March 7th, 2012. Fletcher Grading Contractors, a local business, was the low bidder at $192,187.25. The disadvantaged business enterprise (DBE) goal of 6.2% was exceeded at 67%. This is a unit price contract and not a lump sum contract.

This project will build much needed sidewalk and transit infrastructure along North Louisiana Avenue. Pedestrians currently must walk on the side of the road, in a ditch, or in the street itself. Many children use this thoroughfare as well to reach Emma Elementary School. This project is not within the City limits, but is in the ETJ. The community has been active in getting this project underway and has garnered the support of the City of Asheville, NCDOT, and Buncombe County through a municipal agreement. The scope of work includes sidewalk, curb and gutter, drainage, retaining walls, wheelchair ramps, bus stops, driveways, and utility relocation.

This action complies with the City Council Strategic Operating Plan in fully leveraging funding from the State and other sources for regional transportation improvements.

Pros:

- Improves pedestrian safety.
- Funded by CDBG and JARC grants, with no City General Fund contribution.
- Encourages walking, thereby reducing carbon emissions.
- Future maintenance will be paid for by Buncombe County.

Cons:

- The City could be contracted by Buncombe County for future maintenance of the project.
- Project management and contract administration will consume staff time.

This project will bring $192,187.25 of transportation infrastructure improvements at minimal cost to the City. There is a total of $287,500 budgeted for this project.

City staff recommends City Council adopt the resolution awarding the contract to Fletcher Grading Contractors and authorizing the City Manager to execute on behalf of the City of Asheville the contract and any change order within the budgeted amount.

Councilman Smith was pleased to support this action and noted the low bid was a local company.

**RESOLUTION BOOK NO. 34 – PAGE 304**

**E. RESOLUTION NO. 12-66 - RESOLUTION AUTHORIZING APPLICATION FOR A FEDERAL TRANSIT ADMINISTRATION JOB ACCESS AND REFERSE COMMUTE PROGRAM TO CONTINUE FUNDING THE BLACK MOUNTAIN ROUTE AND AUTHORIZING THE MAYOR TO EXECUTE THE APPROPRIATE DOCUMENTS TO ACCEPT THE GRANT IF AWARDED**

Summary: The consideration of a resolution authorizing a mixture of local, private and federal funding to continue funding the Black Mountain route.

Since inception in 2002 the Black Mountain route has been funded with different funding sources. During the first 7 years, Intercity grant provided 45% Federal, 45% State and 10% match from the Town of Black Mountain, Buncombe County, and from the route's farebox revenue. The Intercity grant was discontinued in November 2009; the North Carolina Department of Transportation funded the route with a Demonstration grant until December 2010. After that date the route was merged with route 29 and funded with City and Warren Wilson College funds,

for the segment from Downtown to Warren Wilson College, and Job Access and Reverse Commute grant for the segment between Warren Wilson and the Town of Black Mountain.

After exploring all the options available, the JARC funding is the only funding source in the short-term we can apply for, and if awarded will allow city staff to pursue other funding sources for the upcoming years. The Job Access and Reverse Commute (JARC) program was established to address the unique transportation challenges faced by welfare recipients and low-income persons seeking to obtain and maintain employment. Eligible activities are capital, planning and operating expenses for projects that transport low income individuals to and from jobs and activities related to employment, and for reverse commute projects.

This route is part of a partnership between Warren Wilson College and the City. As proposed in the Transit Master Plan, this route was merged with route 29 that served the college and operates as a regular route with frequent stops. The route operates four times a day, Monday through Saturday, along US 70 (Tunnel Road) between downtown Asheville and Black Mountain. Mountain Mobility is also applying for the JARC funding to fund the Black Mountain portion of the route. The service will continue connecting with the local Mountain Mobility deviated route service.

This route's ridership is increasing steadily since it was merged in the new route 170.

| Year | Period | Route | Ridership | Change |
|---|---|---|---|---|
| FY2012 | July - Dec. | 170 | 36,193 | 28% |
| FY2011 | Jan. - June | 170 | 28,248 | 21% |
| FY2011 | July - Dec. | 28 | 23,350 | |

The total cost of providing this service is $237,120; 50% or $118,560 will be paid by the grant and the other 50% by the combined contribution of Warren Wilson College (14% or $33,280) and the City of Asheville to the route (36% or $85,280). The city is planning to apply for a one year period.

The application deadline is March 28, 2012.

This action complies with the current City Council 2011-12 Strategic Operating Plan within the Fiscal Responsibility and Multimodal Transportation focus areas by seeking efficiencies in master plan implementation by identifying plan interdependencies, funding sources and key partnerships. This action also complies with operational improvement recommendations included in the Transit Master Plan that was accepted by the City Council on October 27, 2009.

The Transit Commission supports the subject action.

Pros:

- Increased mobility for the citizens of Asheville both within and outside the city.
- This is a step toward retaining the service and funding.

Con:

- The City is required to fund 50% ($118,560) of the subject project cost; funding will be allocated from the Warren Wilson College and City of Asheville contribution to current route 170.

The total cost of the subject project is about $237,120. The City is required to fund 50% ($118,560) of the subject project cost with the remaining 50% funded by the JARC grant. The City's required funding will be allocated from the Warren Wilson College and the City of

Asheville's contribution to the current route 170. Warren Wilson contribution will total $33,280; therefore the City's cost is $85,280 per year. The City's cost will be included in the Transit Fund proposed budget for FY 2012-13.

City staff recommends City Council adopt a resolution authorizing City staff to apply for a FTA Job Access and Reverse Commute Program grant to fund the Black Mountain route and authorizing the Mayor to execute the appropriate documents to accept the grant, if it is awarded to the City of Asheville.

**RESOLUTION BOOK NO. 34 – PAGE 305**

**F. RESOLUTION NO. 12-67 - RESOLUTION AMENDING THE 2012 CITY COUNCIL MEETING SCHEDULE TO DELETE THE MAY 8, 2012, CITY COUNCIL FORMAL MEETING**

**RESOLUTION BOOK NO. 34 – PAGE 306**

**G. ORDINANCE NO. 4069 - BUDGET AMENDMENT TO INCREASE THE CIVIC CENTER FUND BUDGET TO REFLECT UPDATED FISCAL YEAR 2011-12 REVENUE AND EXPENDITURE PROJECTIONS**

Summary: The consideration of a budget amendment, in the amount of $150,000, from the Civic Center operating revenue, to increase the Civic Center Fund budget to reflect updated Fiscal Year 2011-12 revenue and expenditure projections.

In order to fund anticipated expenses over the last quarter of the current fiscal year, staff is recommending that the Civic Center Fund budget be increased by $150,000. It is anticipated that revenue generated by concessions will cover the most if not all of the cost of the budget amendment; therefore, no additional transfer from the General Fund is required at this time. The Civic Center has several events scheduled before June 30 that should generate significant revenues.

This amendment has been presented to the Civic Center Commission and recommended to City Council.

This action supports the City Council Strategic Plan by supporting the Civic Center as a regional entertainment destination and improving the Civic Center customer experience.

Pro:

- Provides sufficient budget authorization for anticipated revenues and expenditures in the Civic Center Fund without increasing the General Fund transfer.

Con:

- If year end revenues are not sufficient due to the extended closing of the Center, some of the budgeted General Fund allocated for transfer to the Civic Center may need to be utilized.

As noted above, this budget amendment is anticipated to be funded with Civic Center operating revenue that will likely exceed original budget estimates. Therefore, there is no expected impact to the City's General Fund budget.

Civic Center staff and Commission recommend City Council approve a budget amendment to increase the Civic Center Fund budget by $150,000 to reflect updated Fiscal Year 2011-12 revenue and expenditure projections.

**ORDINANCE BOOK NO. 27 – PAGE 332**

Vice-Mayor Manheimer asked for public comments on any item on the Consent Agenda, but received none.

Vice-Mayor Manheimer said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Bothwell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

In the Mayor's absence, Councilman Pelly moved to authorize Vice-Mayor Manheimer to sign Resolution No. 12-66. This motion was seconded by Councilman Smith and carried unanimously.

**III. PRESENTATIONS & REPORTS: None**

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER REZONING 157 AND 163 CRAVEN STREET FROM URBAN PLACE DISTRICT TO RIVER DISTRICT**

**ORDINANCE NO. 4070 - ORDINANCE TO REZONE 157 AND 163 ON CRAVEN STREET FROM URBAN PLACE DISTRICT TO RIVER DISTRICT**

Urban Planner Julia Fields said that this is the consideration of an ordinance to rezone 157 and 163 Craven Street from Urban Place District to River District. This public hearing was advertised on March 16 and 23, 2012.

Ms. Fields said that the French Broad River Group, LLC has petitioned the City to rezone three properties along Craven Street, west of the French Broad River and Riverside Drive from Urban Place (UP) District to River District. The site of the former WNC Stockyards, these properties were among twelve properties in the River District that were rezoned in 2007 from River District to Urban Place, a newly created district. The purpose of this district is to foster higher density, mixed-use development in particular on properties in or near the French Broad and Swannanoa Rivers. At the time it was believed that this rezoning would encourage redevelopment of this site.

Having marketed the site for a number of years with its present zoning, in February of this year the owner/manager of the three properties along Craven Street petitioned the City to have these parcels rezoned back to River District. The petitioner indicated that because the River District allows for greater flexibility in use and development design than is found in the Urban Place District, that rezoning back to River should help in the marketing and ultimate redevelopment of this site. Additionally, the property is bisected by another property zoned River District that was not rezoned in 2007 creating an awkward development situation. Another property south of the site and owned by the same LLC is also zoned River. The petitioner would prefer that all the properties be zoned the same - River District.

The property is 5.54 acres in size and is entirely within the regulated 100 year floodplain. A portion of one of the properties along the French Broad is located in the floodway as well. The property was adopted into the Regional Brownfields Initiative in January of 2011 making it eligible for revolving loan funds for any needed cleanup. A small restaurant and a number of large buildings used for a variety of purposes are located on the site.

If the property is rezoned to River District it still would be subject to design standards. Any proposed development would have to be reviewed and approved under the River District Design Review processes.

The Planning and Zoning Commission reviewed this petition at its meeting on March 7, 2012. They voted unanimously to recommend this rezoning to the Asheville City Council. The only person who spoke on the matter was the applicant.

Pros:

- Provides greater flexibility for the development of property in the River Arts District.
- Allows for five parcels in single ownership to have the same zoning.

Con:

- None noted.

Staff finds this request to be reasonable and also recommends approval of this rezoning request.

Vice-Mayor Manheimer opened the public hearing at 5:15 p.m., and when no one spoke, she closed it at 5:15 p.m.

Vice-Mayor Manheimer said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hunt moved for the adoption of Ordinance No. 4070. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 334**

**B. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE CONCERNING CHANGES TO THE STANDARDS REGULATING DIGITAL BILLBOARDS**

**ORDINANCE NO. 4071 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE CONCERNING CHANGES TO THE STANDARDS REGULATLING DIGITAL BILLBOARDS**

Planning & Development Director Judy Daniel said that this is the consideration of an ordinance amending the Unified Development Ordinance concerning changes to the standards regulating digital billboards. This public hearing was advertised on March 16 and 23, 2012.

Assistant Planning & Development Director Shannon Tuch said that the City of Asheville has had a somewhat complex history and relationship with billboards. Back in 2000-02, there were public discussions about amortizing and prohibiting billboards. As a result, the City entered into negotiations with the outdoor advertisers in the area and developed a 10-year agreement that included a new "Cap & Replace" ordinance along with the removal of 10 very high profile billboards in the City. This agreement was signed in 2004 and won't expire until 2014. The Cap & Replace ordinance required that all qualifying billboards be registered, and once registered, they could be maintained and even moved – but no additional billboards could be added to the overall industry. Any relocated billboard could only be re-located to one of nine specific corridors and would also have to meet a number of standards.

Then in 2006, the City adopted a small amendment that allowed billboards to be combined or split into smaller faces, provided the same total amount of square footage was not increased.

Then in 2008, the City was approached by Lamar Outdoor Advertising requesting the consideration of new standards that would allow new digital technology to be used for billboards. The proposal provided that three times the square footage of paper billboard face be removed for every one square foot of digital. After some discussion, these standards were ultimately adopted and included a number of digital specific standards designed to help control the most concerning aspects of these boards.

Both the 2006 and 2008 billboard amendments are not included in, or controlled by, the 2004 billboard agreement.

Shortly after the adoption of the digital billboard standards in 2008, Lamar began installing boards around the City on major corridors and, to date, has installed 7 total, including the most recent one on Tunnel Road, near the Asheville Mall. Fairway Advertising has installed 4 digital billboards, including the one located on Merrimon Avenue. This particular billboard has raised a lot of concern in the community and has caused staff to re-examine and reconsider the standards regulating digital billboards.

Staff first raised the issue of digital billboards with the Planning & Zoning Commission as part of an update to the City's sign code. The Commission chose to separate digital billboards from the rest of the sign updates to be considered separately.

The Commission first considered an update to digital billboard standards in December and at that time, the intent of the recommended ordinance was to specifically address concerns raised by the Merrimon billboard. The Commission debated whether this was enough of a change and requested the matter be continued to allow staff more time to research other options.

The Commission discussed the matter again in January of this year, and the public was invited to comment as well as representatives from both Lamar and Fairway. The Commission was somewhat divided on the matter with some members preferring to strengthen standards and some preferring to eliminate the option of digital billboard standards altogether. After significant deliberation, the Commission ultimately recommended that staff return the following month with the basic amendment that was originally proposed but also directed staff to continue to work on researching the standards that regulate digital billboards and to return at a later date with this research and a possible amendment that would strengthen those standards.

What is before Council now is the ordinance supported by the Planning & Zoning Commission, as an interim step, while staff continues to research the matter.

A summary of the changes is as follows:

(1) There is a change to the corridors in which digital billboards could be erected. Merrimon Avenue has been removed and a narrow and residential portion of Sweeten Creek Road has also been removed.

(2) The setback standard has been extended to any residential unit, not just residential structure.

(3) A new setback of 50' from the row or edge of pavement is proposed on narrow corridors.

There are a number of standards regulating digital billboards that are not being considered at this time, including brightness, dwell time, conversion ratios, etc. that are more complex and would likely require additional research before amending.

Lastly, the option to repeal the standards allowing digital billboards was also discussed at some length at the Commission meeting and, should this be Council's preference, would not require any further research by would require a new amendment and ordinance that would have to go back before the Planning & Zoning Commission.

**Safety:** While many citizens find certain aspects of digital billboards objectionable, the characteristic that is most concerning from a public safety standard is the question of whether these billboards may distract motorists by the bright, changing images and contribute to accident rates. This question was debated some in 2008 when the standards to allow digital billboards were first proposed, however, at that time the data on the subject was extremely biased or inconclusive. The Federal Highway Administration (FHWA) was in the process of studying the issue and was expected to reveal the results in 2009. No results were revealed however, and the FHWA continues to study the issue. Other experts have weighed in on the subject but, once again, the conclusions are in conflict with one another.

One safety study, not limited to billboards alone, concludes that a distraction that causes a driver to look away from the road for more than two seconds greatly increases the likelihood of an accident, and that external stimuli were more likely to distract drivers for longer periods of time than internal distractions [Chan et.al., 2008, *Evaluation on a Driving Simulator of the Effect of Drivers' Eye Behaviors from Distractions Inside and Outside the Vehicle*]. Determining whether a digital billboard causes an individual to look away for more than a brief moment is at the heart of the issue that continues to be debated (see American Planning Association, *Digital Billboards, Distracted Drivers* article).

**Sustainability:** A reduced carbon footprint was thought to be one of the benefits of digital billboards because they utilized energy efficient LED lights, did not require vehicles to be driven to the site, and did not use adhesive and other plastics and papers. There is new information however, that indicates that the energy used for the average digital billboards is higher than originally believed. Comparing the benefits of the new technology to the old techniques is difficult to evaluate and may not be as good as had originally believed.

This proposal does not directly relate to the goals outlined in the Strategic Operating Plan but is most closely aligned with the goal for "job growth and community development" by balancing business needs with community needs and concerns.

The subject of billboards is discussed in some detail in the ***Implementation Matrix*** of the City's comprehensive plan; Goal 1 under the Transportation section of the **Land Use and Transportation** portions of the Matrix states:

> **Goal I**. The design of streets and highways should be consistent with the economic goals of the City of Asheville and should be compatible with the physical character of the community.
>
> And strategy 6 under this goal states:
>
> Strategy 6. New billboards should not be allowed along any road corridors and existing ones should be amortized and removed unless adjacent to federal aid primary highways.

It is important to note, however, that the comprehensive plan was adopted in 2003 before the state passed legislation effectively eliminating a municipality's ability to amortize billboards, and before the City entered into an agreement with the outdoor advertisers in the area. The current "Cap & Replace" ordinance effectively bans the addition of any new billboards.

Pros:

- Addresses compatibility concerns from residents and motorists while still preserving opportunities for off-premise advertising.
- Reduces potential for distractions in other already congested areas.

Con:

- Renders one existing billboard non-conforming.

City staff concurs with the Planning & Zoning Commission and recommends, at a minimum, approval of the wording amendment as proposed. City staff also supports the Commission's recommendation to continue work to strengthen the existing standards.

As an alternative, the City Council may choose to eliminate standards for 5 billboards entirely. Should the Council support this alternative, staff would return later with a revised ordinance.

Vice-Mayor Manheimer said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hunt moved for the adoption of Ordinance No. 4071. This motion was seconded by Councilman Bothwell.

Councilman Hunt felt that removing the digital billboards standards is the best thing for the community for a number of reasons, especially driver safety. However, his concern goes beyond safety. He appreciates the role signage in advertising can play economic development; however, his view is that the economic development of this community is better served by reinforcing the quality of life and quality of character. Digital billboards are a very bright, glaring form of advertising that he feels overwhelms our aesthetic character in our community. After Council deliberates the motion to strengthen the digital billboards standards, he will make another motion to instruct the Planning & Zoning Commission review an ordinance that eliminates standards for digital billboard entirely.

Vice-Mayor Manheimer opened the public hearing at 5:34 p.m.

The following individuals spoke in support of eliminating digital billboards standards entirely, for several reasons, some being, but are not limited to: billboard control is good for business; billboards degrade the natural environment; billboards endanger health and safety; billboards hamper economic growth; limiting or banning digital billboards makes sense for Asheville with its tourism-based economy; and need to begin discussion on how we can approach phasing out digital billboards:

Ms. Diane Hankins, east Asheville resident (requested a 6-month moratorium on all digital billboards)
Mr. Jane Northway (provided Council with a copy of "Scenic America's Trust About Billboards")
Mr. Alan Escovitz (provided Council with a copy of "Billboard Control is Good for Tourism")
Ms. Grace Curry, representing the local Sierra Club (supports 6-month moratorium on all digital billboards)
Rev. Tyler Martin, north Asheville resident
Ms. Dakota Forgione

Mr. Terry Graves, General Manager of Fairway Outdoor Advertising, said they have been in the community a long time. They also do a lot with public service announcements, and provided Council with a copy of the many public service announcements. Another attribute of

digital advertising is, because of the nature of digital, we can involve the community in different ways quicker, such as, Amber Alerts and social media. We have received a lot of positive feedback and exposure from those social media aspects. He noted that he was part of the negotiations when billboards were banned from downtown and said that Fairway is committed to continuing to work with the City.

Rev. Christopher Chiaronmonte felt there needs to be a balance regarding the use of digital billboards.

Vice-Mayor Manheimer closed the public hearing at 5:59 p.m.

When it was determined that if the ordinance is adopted, digital billboards are still allowed to apply for a permit if they meet these new stricter standards, Councilman Pelly asked Councilman Hunt for a friendly amendment to his motion to consider a moratorium until a new ordinance can be considered by Council to eliminate the standards entirely. City Attorney Oast noted that it would take just as much time to get a moratorium in place (notice and public hearing) as it would be to direct the Planning & Zoning Commission to review a new ordinance to eliminate the standards and bring it back to City Council for consideration.

The motion made by Councilman Hunt and seconded by Councilman Bothwell to amend the standards regulating digital billboards carried unanimously.

City Attorney Oast noted that these provisions apply only to digital billboards. We are subject to the Cap & Replace ordinance regarding static billboards until January of 2015, including Merrimon Avenue and that portion of Sweeten Creek Road. In summary, Council cannot adopt an ordinance to remove static billboards prior to January 2015.

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Councilman Hunt moved to instruct the Planning & Zoning Commission to consider an ordinance to eliminate digital billboard standards entirely. This motion as seconded by Councilman Pelly.

Councilman Hunt appreciated the digital billboard companies working with the City in the past and hoped that the good relationship will continue in the future.

In response to Councilman Davis, City Attorney Oast said that if City Council adopts an ordinance eliminating digital billboard standards entirely, the existing digital billboards would be grandfathered, but no new ones could be erected.

Vice-Mayor Manheimer opened the public hearing at 6:10 p.m.

The following individuals spoke in support of eliminating digital billboards entirely:

Mr. Paul Van Heden
Mr. Dave Castel
Mr. Joe Minicozzi, licensed and certified planner with the American Institute of Certified Planners

Vice-Mayor Manheimer closed the public hearing at 6:14 p.m.

In response to Councilman Hunt regarding a timeframe, Ms. Tuch said that the Planning & Zoning Commission could consider the ordinance at their May meeting and it could be back before City Council at the end of May.

The motion made by Councilman Hunt and seconded by Councilman Pelly to instruct the Planning & Zoning Commission to consider an ordinance to eliminate digital billboard standards entirely carried unanimously.

**V. UNFINISHED BUSINESS:**

**A. UPDATE ON LIVING WAGE POLICY**

**RESOLUTION NO. 12-68 - RESOLUTION ADOPTING A LIVING WAGE FOR FULL- AND PART-TIME CITY EMPLOYEES AND GENERAL SERVICE CONTRACTS $30,000-$200,000**

Administrative Services Manager Brenda Mills said that the purpose of this staff report is to provide an update on the Living Wage Policy and recommended action for the Fiscal Year 2012-2013, which includes a resolution adopting a living wage for full- and part-time City employees and general service contracts $30,000-$200,000.

In April 2011, City Council approved a resolution setting a living wage for City of Asheville full- and part-time employees and contract employees working on General Service contracts $30,000-$90,000 in value. The resolution set the living wage for Fiscal Year 2011-2012 at $11.35/hour without employer provided health insurance and $9.85/hour with employer provided health insurance.

Based on direction given in 2011, City Council stated its intent to annually evaluate the living wage as part of the budget process to ensure the wage stays current with inflationary indexes (such as the Consumer Price Index) and/or the most current recommendation from Just Economics. The City Council also stated it would evaluate if the living wage provision should be extended to additional thresholds of General Services contracts. Once the rate and contract threshold is set, the City's standard terms and conditions for general service contracts will be updated annually to reflect that wage.

The terms and conditions for contracts within this threshold have contained a provision that the vendor is required to pay a Living Wage to employees who carry out duties specific to the completion of the contract. It has been the City's intent to pay the additional cost of incorporating a living wage into General Service contracts.

Analysis:

**(1) Living Wage Rate**
It is the recommendation of Just Economics, based on a formula that takes into consideration costs of housing for a single person, that the living wage rate remain unchanged in Fiscal Year 2012-2013 at $11.35/hour without employer provided health insurance and $9.85/hour with employer provided health insurance.

**(2) Living Wage application to General Service Contracts**
The City's new financial system, MUNIS, allows general services contract information to be collected and reviewed each quarter for living wage review. Data collected since July 2011 shows the following impact of the living wage policy on the city's general services contracts:

- Total of 114 general services contracts were let through March 14, 2012
- Number of general services contracts by dollar thresholds:
  - Between $30,000 and under $90,000 (17 total) – Eight were subject to living wage and vendor complied with living wage requirements per the City's current policy.

- Between $90,000 and under $200,000 (4 total) – All contracts in this threshold would have been subject to living wage if the current policy had included contracts up to $200,000.
- Over $200,000 (6 total) – Two contracts in this threshold would have been subject to living wage if the current policy had included contracts above $200,000.

For the data above, contracts not subject to the living wage would have been those that did not include a labor services (i.e., software licensing purchases, Interlocal agreements, etc.). For the most part, contracts executed in the $90,000-$200,000 and above range included services where living wage rates are already paid (audit services, Development Services software implementation, IT infrastructure maintenance, radio infrastructure maintenance, etc.).

The City of Asheville currently meets the current living wage standard for full-time employees, and so no fiscal impact is expected.

Data from contracting in the current fiscal year shows that when the City contracted for services above $90,000, the vendor typically already paid a living wage. Based on the City's current year performance, the impact of adjusting the General Services contract threshold up to $200,000 may have a limited financial impact. However, if the City executes large contracts for labor intensive services (i.e., security services, landscaping and mowing services), there may be a more significant impact, possibly ranging from 10-30%.

Adoption of a living wage policy supports the Asheville City Council's goal to make Asheville a place that is affordable for people of all income, life stages and abilities. The Finance Committee reviewed and unanimously approved staff's recommendation at its meeting on March 20, 2012.

Staff recommends adoption of a Living Wage resolution that:

(1) Sets the living wage rate at $11.35/hour without employer provided health insurance and $9.85/hour with employer provided health insurance;
(2) Increases the contract threshold for General Services subject to the living wage up to $200,000 for review;
(3) Directs staff to continue to monitor the impact of an adjustment with data provided to City Council as part of the quarterly financial reports, and;
(4) Brings the policy back to City Council for official review as part of the FY 13-14 budget process.

In response to Councilman Davis, and for clarification purposes, Ms. Mills explained that the living wage provision for general service contracts from $30,000-200,000 is a requirement for all bidders. The City would contract with the lowest responsible bidder if they meet all the requirements. We may; however, have to pay a little more for the contract that meets the living wage requirement if the lowest bidder does not pay a living wage.

When we receive bids, Councilman Davis felt it would be helpful to have the figures of how many employers would not be paying a living wage if it were not required and to monitor what the difference would be.

Rev. Christopher Chiaronmonte felt that $11.35 is not a living wage.

The Executive Director of Just Economics thanked the City for the living wage provisions and hoped that other companies will follow in the City's footsteps.

Vice-Mayor Manheimer said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 12-68. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE307**

**VI. NEW BUSINESS:**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Ms. Pat Dockery presented Council with a petition which reads "We the undersigned residents of West Asheville would like for all excessive noise (especially from The Get Down club that has shown blatant disregard for the neighborhood) to cease and desist between the hours of 10:00 p.m. and 7:00 a.m." She also presented Council with a thread from Facebook regarding the noise ordinance. She said she attended the Public Safety Committee and was not satisfied with the outcome. She asked that Council adopt a temporary ordinance until such time as the Public Safety Committee reviews further information from City staff.

Rev. Christopher Chiaronmonte asked for Council to investigate why the Asheville Police Department selectively enforces ordinances.

Ms. Judy Mattox, Chair of the local Sierra Club, urged Council to vote for intervention on Senate Bill 183, selective vegetation removal.

**Closed Session**

At 6:53 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: Scenic NC Inc.; North Carolina Outdoor Advertising Association, et al; State of North Carolina; J. Jerome Jensen, Jr., et al (Biltmore Lake Annexation); Cities of Rocky Mount, Goldsboro, Wilmington, Kinston, Lexington; and Henderson County. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); and (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authorization is contained in G.S. 143-318.11(a)(4. This motion was seconded by Councilman Smith and carried unanimously.

At 8:13 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

**VIII. ADJOURNMENT:**

Vice-Mayor Manheimer adjourned the meeting at 8:13 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – April 10, 2012 – 3:30 p.m.
First Floor North Conference Room

Worksession

Present: Vice-Mayor Esther E. Manheimer, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Terry M. Bellamy

**Enterprise Funds & Capital Improvement Plan**

Director of Finance & Management Services Lauren Bradley reviewed the following General Fund worksession: (1) Maintain current property tax rate and City services; (2) Proceed with technical adjustments and expenditure obligations; (3) Include $500,000 for employee compensation; revisit compensation mid-year; (4) Consider $150,000 in Parking Fund revenues over expenditures for: (a) Transit service on holidays on main routes with limited hours: $30,000; (b) Phase I implementation of form-based planning policy: $100,000; and (c) Increase EDC allocation from $40,000 to $60,000: $20,000; and (5) Look for new revenue opportunities to increase the Housing Trust Fund allocation..

There was discussion regarding the Phase I implementation of the form-based code vs. an unknown allocation to the Housing Trust Fund, both of which were a priority. Ms. Bradley explained there may be another viable revenue source regarding the privilege license for gaming machines. It is estimated, if adopted by Council, an additional $200,000 of new revenue next fiscal year. Several suggestions were discussed, including (1) a suggestion was to allocate the $200,000 of new revenue to the Housing Trust Fund and if it was not attainable, then delay Phase I of the form based code and use the $100,000 for the Housing Trust Fund allocation; (2) a suggestion to use the $100,000 from the form based code towards the Housing Trust Fund, and if we do realize any revenues from the other revenue source that the first $100,000 go towards the form based code and the second $100,000 go to the Housing Trust Fund; and (3) a suggestion was to use the $60,000 allocation for the Economic Development Coalition towards the Housing Trust Fund. However, it was the consensus of Council to set aside $100,000 for contractual services in a line item in the City Manager's budget targeted towards housing and community development and then Council can make their decision later in the process.

Water Fund outlook includes: (1) Operating revenues are performing better than budget in current year – which means more revenue next year without a rate increase – partly due to improved meter accuracy with AMR's; (2) FY 12-13 operating budget will be adjusted downward to reflect actual expenses; and (3) As a result, pay as you go contribution to capital will increase by $1.3 million.

Regarding the Parking Fund outlook, parking revenues are projected to exceed expenses by $150,000 in FY 12-13 (a) Includes increasing transfer to the Transit Fund from $500,000 to $590,000; (b) Includes full year of expenses associated with operating Biltmore Avenue Parking Garage (including 2 FTEs) and debt service; and (c) Includes transfer of $55,000 in operating funds to parking capital improvements for meter replacements.

Regarding the Transit Fund outlook (1) Loss of $160,000 in State funding; partially off-set by increase in Transit revenue as a result of increased ridership; (a) Increases Parking Fund transfer by $90,000 for a total of $590,000; General Fund transfer to remain at $985,000; and (2) Projecting decrease in fuel consumption will offset increase in fuel prices.

Regarding the Golf Fund, (1) Right-sized revenue budget and included $140,000 transfer from General Fund based on past performance; (2) Staff continues to explore alternatives for management efficiencies; and (3) Responses to RFP were due March 23 (8 responses); pursuing any option will likely require funds for operating and capital budgets.

Councilman Hunt suggested, and it was the consensus of Council, that staff make a good faith effort in the coming fiscal year to work toward reducing the subsidy for next fiscal year for the Nature Center and Golf Course combined from $650,000 to $450,000.

Regarding the Stormwater Fund, (1) Stormwater utility was created as a requirement of the Clean Water Act to (a) maintain/improve the public storm drain system, (b) enforce stormwater and erosion standards related to (re)construction activities, (c) prevent illegal dumping, and (d) educate the public about stormwater issues; (2) Fee brings in approximately $3.0 million annually in revenue; (3) Fee collections have historically been better than budget projections (a) FY12 Budget included $700,000 fund balance appropriation for Victoria Road capital project; and (4) Revenues in FY 13 budget are projected to equal expenditures (a) FY13 Proposed Budget includes $290,000 fund balance appropriation for Michigan Avenue capital project.

Regarding the General Capital Improvement Program (CIP), the CIP categories are as follows: **Multi-modal:** Streets, sidewalks, greenways, pedestrian safety projects, Transit system investments; **Infrastructure:** Bridges, retaining walls, sewer projects, traffic signal poles, infrastructure associated with water lines; **Buildings & Facilities:** Building and facility maintenance, roof replacements, recreation center maintenance, park maintenance, Civic Center renovations, Urban Trail maintenance; **Equipment & Technology:** Radio infrastructure and radio replacements, software upgrades and replacements; and **Vehicle Replacement:** Vehicles and other rolling stock. Using charts, she explained what drives the level of investment, and the 2011-12 CIP revenues.

The 2011-12 projects underway include: City Hall Exterior Repairs: $5.5 million; New sidewalk construction: $1.8 million; Beaucatcher Greenway: $1.25 million; Vehicle and PC Replacements: $4 million; Wild Cherry Bridge: $700,000; and Montford Street Rebuild: $300,000.

She then reviewed the FY 2012-13 CIP revenues and proposed CIP expenditures.

The 2012-13 multi-modal expenditures, totaling $3.4 million (56%) include: (1) Street Resurfacing: $1.3 million, 5.83 miles resurfaced - Slightly more than FY 11-12; (2) Pedestrian Safety: $35,000 - Charlotte Street corridor comprehensive traffic engineering analysis; (3) Sidewalk maintenance: $480,000, 4,900 linear feet maintenance work - $800,000+ in sidewalk maintenance personnel and related costs budgeted in operating budget; (4) New sidewalk construction: $870,000, 1.35 miles new sidewalk; (5) Greenway development: $100,000 - Design work for Town Branch Greenway to get it shovel ready; and (6) Bicycle Master Plan Projects: $81,000 - Northside Sharrow Network: $51,000; and Design plans for north- and west-end bike connectors: $30,000.

The 2012-13 building and facilities expenditures, totaling $1.192 million (22%) include: (1) Roof replacements: $200,000, (Fire Stations, Hunt Hill facility, Burton Street); (2) General facility maintenance: $91,000; (3) General Fund contribution to Civic Center debt service and maintenance: $400,000; (4) Public Art (a) Maintenance: $40,000; and (b) Reserve for future acquisitions: $47,807 (represents 1% of eligible projects over five year CIP); and (5) Park & Recreation center maintenance: $400,000 (a) Gym floor replacement at Montford Center, Aston Park Court Lifts, Resurface Velodrome.

The 2012-13 equipment & technology, totaling $265,000 (5%) include: (1) Public safety radio replacements: $100,000; (2) Fuel Station Pump replacement: $75,000; and (3) Garbage collection roll cart replacements: $90,000.

The 2012-13 vehicle replacement, totaling $1 Million (19%), includes the vehicle replacement: $1,000,000 - $550,000 targeted for CNG vehicles.

The 2012-13 Green CIP includes: (1) Achieve a 4% carbon footprint reduction each year for 20% total reduction over five years; and (2) Funded by "revolving" utility savings generated by energy efficiency projects for investment into additional projects (a) Streetlight retrofit project provides significant utility savings for five-year Green CIP; (b) $1.3 million projected for third phase of streetlight retrofit; and (c) $840,000 for City facility retrofit and weatherization projects (i) City Hall controls; Boiler maintenance and repairs at 10 facilities; window and HVAC replacements.

Ms. Bradley then reviewed the FY 2013-14 CIP revenues, a chart of CIP planning years of FY 2013-14 – FY 2016-17; and FY 2013-17 CIP revenues.

She then reviewed the CIP snapshots using a chart showing the current five year CIP. For accelerating progress by adding $1 million, a possible structure would be (1) $300K allocated to Pay-Go for capital maintenance; or (2) Remainder dedicated to debt service for an additional $13 million in debt capacity. An accelerated progress for adding $4 million possible structure would be (1) $1.4 million allocated to the Pay-Go Fund; or (2) $2.6 million allocated for debt service to gain an additional $35 million in debt capacity - COPS or GO?

Policy direction needed includes: (1) For the FY 12-13 proposed CIP budget, is staff programming resources in proportion to the City's strategic and mission critical priorities? (2) Is Council supportive of the level and timing of resource allocations? and (3) What process would City Council like to pursue to discuss and prioritize planning years?

Ms. Bradley responded to various questions/comments from Council and those which could not be answered immediately would be provided to the full Council.

After discussion, it was the consensus of Council that they are generally comfortable with how staff has split up the funding in the General CIP Program for Fiscal Year 2012-13 and that the Finance Committee will discuss more about a process and prioritizing the planning years in the budget.

At 4:36 p.m., Councilman Bothwell moved to adjourn the worksession. This motion was seconded by Councilman Smith and carried unanimously.

Tuesday – April 10, 2012 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor Esther E. Manheimer, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Terry M. Bellamy

**PLEDGE OF ALLEGIANCE**

Vice-Mayor Manheimer led City Council in the Pledge of Allegiance.

**INVOCATION**

Vice-Mayor Manheimer gave the invocation.

## I. PROCLAMATIONS:

### A. PROCLAMATION PROCLAIMING APRIL 2012 AS "CHILD ABUSE AWARENESS MONTH"

Councilman Smith read the proclamation proclaiming April, 2012, as "Child Abuse Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Bill McGuire, Director/CEO of Child Abuse Prevention Services Inc., who briefed City Council on some activities taking place during the month.

### B. PROCLAMATION PROCLAIMING APRIL 2012 AS "PARKINSON'S DISEASE AWARENESS MONTH"

Councilman Bothwell read the proclamation proclaiming April, 2012, as "Parkinson's Disease Awareness Month" in the City of Asheville. He presented the proclamation to Jim Hall, Linda Morgan and Dick Poore, who briefed City Council on some activities taking place during the month.

### C. PROCLAMATION PROCLAIMING APRIL 15-21, 2012, AS "NATIONAL VOLUNTEER WEEK"

Councilman Hunt read the proclamation proclaiming April 15-21, 2012, as "National Volunteer Week" in the City of Asheville. He presented the proclamation to Ms. Michelle Bennett, Director of Hands On Asheville, our local clearing house for non-profit volunteer opportunities, who briefed City Council on some activities taking place during the week.

### D. RECOGNITION OF RECIPIENTS OF GOVERNOR'S AWARD FOR VOLUNTEER SERVICE

Councilman Hunt said that National Volunteer Week is a time for us to stop and think about what volunteers contribute to the efforts of local government, non-profits and faith-communities to improve the lives of our citizens. In addition to proclaiming this week National Volunteer Week, she took this opportunity to recognize local volunteers who have received special recognition for their efforts over the past year. 2012 is the 34th consecutive year the North Carolina Commission on Volunteerism and Community Service has honored community members who demonstrate a strong commitment to improving their community through volunteerism. The City of Asheville's two nominations have been selected to receive the 2012 Governor's Volunteer Service Award. The local recipients of the 2012 Governor's Award are:

(1) Lora Ann DeGroat: Ms. DeGroat was nominated for her Girl Scout Silver Award project which resulted in the creation of the Asheville Fire Department's Volunteer Fire Hydrant Painting program.

(2) Asheville Police Department Volunteer Chaplain Corps: The Chaplain Corps was nominated in recognition of the group's 31-year service to the community and individual Corps members' commitment to provide a wide range of emotional and spiritual support to police employees and community members who experience crisis or trauma situations. The APD Volunteer Chaplains recognized are Chaplain Coordinate Kent Withington and Chaplains Sue Barron, Steve Brady, Tim Brady, Sister Carmen Cruz, Don Furniss, Joe Ontiveros, Billy Osigian, Philip Priddy, Wayne Roper, Jane Smith and Bill Snyder.

### E. RECOGNITION OF THE VOLUNTEERS IN SERVICE TO AMERICA PROGRAM

Councilman Hunt said that the VISTA program is 5 years old this year and we'd like to acknowledge the great work these full-time volunteers have done. The focus of the Asheville Learning Links VISTA program is to build the capacity of organizations in our community to serve the needs of young people in Asheville City Schools. They do this by providing crisis intervention, advocacy, enriching arts, and by developing programs that support families living in poverty. Each VISTA lives at the poverty level for one year while serving our community. So far 34 VISTAs have made this commitment, some have committed two years. Among the list of accomplishments are the Listening To Our Teens Report that mobilized the community in support middle school youth, The Burton Street Community Project, and over $200,000 in new revenue to organizations. Many of our former VISTAs have gone on to do great things. Erika Germer formerly a VISTA at the Asheville City Schools Foundation is the program director for the City of Asheville Youth Leadership Academy. The organizations touched by their community service are many and span our community. They are: Asheville City Schools Foundation; Asheville-Buncombe Community Relations Council; Asheville Design Center; ABCCM; Asheville Homeless Initiative; Center for Diversity Education; Children First-Communities and Schools; Eagle Street Development Corporation; Green Opportunities; Green Works; LEAF in Schools & Streets; NC Stage Company; On Track Financial; Ribbon of Hope After School; Mentoring Program (Asheville City Schools Foundation, Delta House, YWCA); Weed & Seed Program at Pisgah View; WNC Alliance; and YWCA.

Councilman Hunt then recognized Ms. Leah Ferguson, Co-Director of the Asheville City Schools Foundation who spoke about the program.

**F. EMPLOYEE RECOGNITIONS**

City Manager Jackson recognized (1) Firefighter Jay Bettencourt as Asheville Firefighter of the Year Award - Each year the WNC Association of Firefighters gives an award to an outstanding individual who has distinguished himself or herself in the fire service. The association accepts nominations from across the western part of state from 395 departments and over 13,000 firefighters in search of just such an individual. This year, Asheville firefighter Jay Bettencourt was chosen as WNC Firefighter of the Year. Jay was recognized and presented this award on January 18, 2012, in Lincolnton, N.C., at the WNCAFF quarterly meeting; and (2) Director of Water Resources Steve Shoaf for receiving the George Warren Fuller Award - At the 91st Annual Conference of the NC American Waterworks and Water Environment Association, Steve Shoaf was awarded the George Warren Fuller award. This is an AWWA award named for Mr. Fuller in recognition of his many contributions to the field of sanitary engineering. It is the highest award that can be given by a State Section of the Association. Mr. John McLaughlin, Chair of the NC American Waterworks and Water Environment Association was pleased to describe the recognition as well.

Vice-Mayor Manheimer thanked the employees on what they do on behalf of the City of Asheville and City Council. She was proud of City staff and looked forward to highlighting more accomplishments.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 27, 2012**

**B. RESOLUTION NO. 12-69 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE EARTH DAY EVENT ON APRIL 21, 2012**

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**RESOLUTION NO. 12-70 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BIG LOVE FEST ON MAY 6, 2012**

**RESOLUTION NO. 12-71 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE FOR THE MONTFORD PARK PLAYERS 2012 OUTDOOR SEASON ON MAY 10, MAY 11, MAY 12, MAY 13, MAY 17, MAY 18, MAY 19, MAY 20, MAY 24, MAY 25, MAY 26, MAY 27, JUNE 1, JUNE 2, JUNE 3, JUNE 8, JUNE 9, JUNE 10, JUNE 15, JUNE 16, JUNE 17, JUNE 22, JUNE 23, JUNE 29, JUNE 30, JULY 1, JULY 6, JULY 7, JULY 8, JULY 13, JULY 14, JULY 15, JULY 20, JULY 21, JULY 27, JULY 28, JULY 29, AUGUST 3, AUGUST 4, AUGUST 5, AUGUST 10, AUGUST 11, AUGUST 12, AUGUST 17, AUGUST 18, AUGUST 24, AUGUST 25, AUGUST 26, AUGUST 31, SEPTEMBER 1, SEPTEMBER 2, SEPTEMBER 7, SEPTEMBER 8, SEPTEMBER 9, SEPTEMBER 14, SEPTEMBER 15 AND SEPTEMBER 16, 2012**

**RESOLUTION NO. 12-72 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE DOWNTOWN AFTER FIVE EVENTS ON MAY 18, JUNE 15, JULY 20, AUGUST 17 AND SEPTEMBER 21, 2012**

**RESOLUTION NO. 12-73 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SAFARI ON MAY 31, 2012**

**RESOLUTION NO. 12-74 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BEER CITY FESTIVAL ON JUNE 2, 2012**

**RESOLUTION NO. 12-75 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BEER CITY CUP ON SEPTEMBER 2, 2012**

**RESOLUTION NO. 12-76 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CLIPS OF FAITH BEER & FILM TOUR ON SEPTEMBER 7, 2012**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Asheville Earth Day on April 21, 2012; The Big Love Fest on May 6, 2012; Montford Park Players 2012 Outdoor Season on May 10, May 11, May 12, May 13, May 17, May 18, May 19, May 20, May 24, May 25, May 26, May 27, June 1, June 2, June 3, June 8, June 9, June 10, June 15, June 16, June 17, June 22, June 23, June 29, June 30, July 1, July 6, July 7, July 8, July 13, July 14, July 15, July 20, July 21, July 27, July 28, July 29, August 3, August 4, August 5, August 10, August 11, August 12, August 17, August 18, August 24, August 25, August 26, August 31, September 1, September 2, September 7, September 8, September 9, September 14, September 15, September 16, 2012; Downtown After 5 on May 18, June 15, July 20, August 17 and September 21, 2012; the Mountain Safari on May 31, 2012; the Beer City Festival on June 2, 2012; the Beer City Cup on September 2, 2012; and the Clips of Faith Beer & Film Tour on September 7, 2012.

- The Lake Eden Arts Festival in conjunction with Mountain Roots Management has requested through the City of Asheville Development Service Center that City Council

permit them to serve beer and/or unfortified wine at Asheville Earth Day and allow for consumption at this event.

Asheville Earth Day will be held on Saturday, April 21, 2012 from 12:00 p.m. to 10:00 p.m. within the boundaries of the 100 block of Lexington Avenue as per the area limits referenced on the accompanying site map.

- Asheville City Schools Foundation has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at The Big Love Fest and allow for consumption at this event.

  The Big Love Fest will be held on Sunday, May 6, 2012 from 2:00 p.m. to 8:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green, Reuter Terrace, Vance Median and Raised Lawn areas including South Spruce Street between the intersections of South Pack Square and College Street, North Pack Square between the intersections of Biltmore Avenue and South Pack Square, South Pack Square between the intersections of Biltmore Avenue and South Market Street and within the City Hall/Courthouse Parking Lot as per the area limits referenced on the accompanying site map.

- The Montford Park Players has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at the Montford Park Players 2012 Outdoor Season and allow for consumption at this event.

  The Montford Park Players 2012 Outdoor Season will be held on May 10, May 11, May 12, May 13, May 17, May 18, May 19, May 20, May 24, May 25, May 26, May 27, June 1, June 2, June 3, June 8, June 9, June 10, June 15, June 16, June 17, June 22, June 23, June 29, June 30, July 1, July 6, July 7, July 8, July 13, July 14, July 15, July 20, July 21, July 27, July 28, July 29, August 3, August 4, August 5, August 10, August 11, August 12, August 17, August 18, August 24, August 25, August 26, August 31, September 1, September 2, September 7, September 8, September 9, September 14, September 15, September 16, 2012 from 7:30 p.m. to 10:30 p.m. within the boundaries of the Hazel Robinson Amphitheatre as per the area limits referenced on the accompanying site map.

- The Asheville Downtown Association has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at Downtown After 5 and allow for consumption at this event.

  Downtown After 5 will be held on the Fridays of May 18, June 15, July 20, August 17, September 21, 2012 from 5:00 p.m. to 9:00 p.m. within the boundaries of the 100 block of Lexington Avenue as per the area limits referenced on the accompanying site map.

- Friends of the WNC Nature Center has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at the Mountain Safari and allow for consumption at this event.

  The Mountain Safari will be held on Thursday, May 31, 2012 from 5:30 p.m. to 9:30 p.m. within the boundaries of the WNC Nature Center property as per the area limits referenced on the accompanying site map.

- Big Brothers Big Sisters of WNC in conjunction with GSCBA & ABA has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at the Beer City Festival and allow for consumption at this event.

  The Beer City Festival will be held on Saturday, June 2, 2012 from 12:00 p.m. to 6:00

p.m. within the boundaries of Pack Square Park's Roger McGuire Green, Spruce Street between the intersections of South Pack Square & College Street, and within the City Hall/Courthouse Parking Lot as per the area limits referenced on accompanying site map.

- The Western North Carolina Soccer Foundation has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at the Beer City Cup and allow for consumption at this event.

The Beer City Cup will be held on Sunday, September 2, 2012 from 12:00 p.m. to 10:00 p.m. within the boundaries of Memorial Stadium as per the area limits referenced on the accompanying site map.

- New Belgium Brewing Company in conjunction with the Asheville Downtown Association has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at the Clips of Faith Beer and Film Tour and allow for consumption at this event.

The Clips of Faith Beer & Film Tour will be held on Friday, September 7, 2012 from 7:00 p.m. to 10:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green including City Hall/Courthouse Parking Lot as per the area limits referenced on the accompanying site map.

These actions have no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for Lake Eden Arts Festival, Asheville City Schools Foundation, Montford Park Players, Asheville Downtown Association, Friends of the WNC Nature Center, Big Brothers Big Sisters of WNC, and the Western North Carolina Soccer Foundation.

Con:

- Potential for public safety issues

Overtime pay for Asheville Police officers per sponsorship agreement for Downtown After 5. There is no fiscal impact for Asheville Earth Day, The Big Love Fest, the Montford Park Players 2012 Outdoor Season, the Mountain Safari, the Beer City Festival, the Beer City Cup, and the Clips of Faith Beer & Film Tour.

City staff recommends City Council adopt the resolutions authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Asheville Earth Day, The Big Love Fest, the Montford Park Players 2012 Outdoor Season, the Mountain Safari, the Beer City Festival, the Beer City Cup, and the Clips of Faith Beer & Film Tour.

**RESOLUTION NO. 12-69 - RESOLUTION BOOK NO. 34 – PAGE 308**
**RESOLUTION NO. 12-70 - RESOLUTION BOOK NO. 34 – PAGE 311**
**RESOLUTION NO. 12-71 - RESOLUTION BOOK NO. 34 – PAGE 314**
**RESOLUTION NO. 12-72 - RESOLUTION BOOK NO. 34 – PAGE 317**
**RESOLUTION NO. 12-73 - RESOLUTION BOOK NO. 34 – PAGE 320**
**RESOLUTION NO. 12-74 - RESOLUTION BOOK NO. 34 – PAGE 323**
**RESOLUTION NO. 12-75 - RESOLUTION BOOK NO. 34 – PAGE 326**
**RESOLUTION NO. 12-76 - RESOLUTION BOOK NO. 34 – PAGE 329**

**C. RESOLUTION NO. 12-77 - RESOLUTION AUTHORIZING THE PURCHSE OF 1-INCH, 1 1/2-INCH AND 2-INCH METER BOXES FROM SOLE SOURCE VENDOR PSP MANUFACTURING**

Summary: The consideration of a resolution to exempt the formal bidding requirement for the subject purchasing bid, authorize Water Resources to purchase new 1-inch, 1 ½-inch, and 2-inch new meter boxes, and recognize PSP Manufacturing as the sole source for the purchases.

North Carolina General Statute 143-129 (e) allows exceptions to formal bidding when standardization or compatibility is the overriding consideration.

In November 2011, the Water Resources Department Standard Details were updated to detail new meter box requirements for 1-inch, 1 ½-inch, and 2-inch meters. The new meter box requirement will allow more sizes of water meters to fit within the same meter box, thereby reducing the various sizes of meter boxes needed by the WRD. The meter box shown on the updated details are manufactured by PSP Manufacturing & Supply in Rome, Georgia. Currently, Water Resources is not aware of another manufacturer for these meter boxes.

Water Resources staff consulted with the Purchasing Division on the need to sole source the purchase to PSP Manufacturing & Supply due to compatibility issues with the new WRD Standard Details. All parties agreed that PSP Manufacturing & Supply should be recognized as the sole source for this purchase and a Purchase Order should be issued to them for the purchase of the new 1-inch, 1 ½-inch, and 2-inch meters boxes. The sole source with PSP Manufacturing will initially be for 12 months to allow time for interested vendors to update their products to match the City's needs and provide a competitive bid.

This project is part of City Council's strategic plan to improve city infrastructure and to operate at the highest levels of fiscal responsibility.

Pros:

- Recognizing PSP Manufacturing as the sole source for the 1, 1 ½, and 2-inch meter boxes and authorizing the purchase from this vendor will ensure compliance with WRD's Standard Details.
- The new meter boxes can be locked, which will deter tampering and water theft.
- The new meter box has a locking mechanism that does not allow the lid to slip, slide, or otherwise dislocate, which greatly reduces pedestrian liability when located in sidewalks or other pedestrian-friendly environments.

Con:

- The new meter boxes will be more expensive than the current meter boxes. WRD currently pays $375 for 1, 1 ½, and 2-inch meter boxes. The price will increase to $671 per meter box. Because the proposed meter box can accommodate different meter sizes, that should help compensate for the increased expense.

The funding needed for this purchase is currently allocated in the Water Resources' Operating budget.

City staff recommends City Council consideration of a resolution to exempt the formal bidding requirement for the subject purchasing bid, authorize Water Resources to purchase new 1-inch, 1 ½-inch, and 2-inch new meter boxes, and recognize PSP Manufacturing as the sole source for this purchase.

**RESOLUTION BOOK NO. 34 – PAGE 332**

**D. RESOLUTION NO. 12-78 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH ASHEVILLE OIL**

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**COMPANY INC. FOR REAL PROPERTY KNOWN AS TRIANGLE PARK LOCATED ON S. MARKET STREET**

Summary: The consideration of a resolution authorizing the City Manager to execute a lease agreement with Asheville Oil Company, Inc. for real property known as Triangle Park, located on S. Market Street (PIN # 9648.49.7620.00000).

For many years, the City of Asheville has leased the property known as Triangle Park from Asheville Oil Company, Inc. in order to provide a public park space in downtown Asheville. At this time, the current lease has expired and the City and Asheville Oil Company, Inc. would like to continue the lease arrangement based on the following terms:

(1) Purpose: For public park, recreation and cultural arts purposes including public special events such as festivals.
(2) Term: Five year lease with an option to renew for an additional five year period
(3) Rental payment: City agrees to pay annual property taxes and all associated utility costs
(4) Termination: Mutual rights to terminate at 180 days prior written notice
(5) Maintenance: City responsible for all maintenance and repairs

This action complies with the City of Asheville Parks, Recreation, Cultural Arts and Greenways Master Plan by maintaining a community park amenity within downtown Asheville.

Pros:

- Continued public park property for the community.
- No change in terms from previous lease

Con:

- None.

The annual cost for the property taxes and storm water utility are estimated at approximately $1,700. This expense is part of the Park, Recreation and Cultural Arts Budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute the lease agreement with Asheville Oil Company, Inc. for real property known as Triangle Park.

**RESOLUTION BOOK NO. 34 – PAGE 333**

**E. RESOLUTION NO. 12-79 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CHANGE ORDERS TO THE CONTRACT WITH CDM-SMITH FOR AN ENVIRONMENTAL ASSESSMENT FOR A PORTION OF THE WILMA DYKEMAN RIVERWAY PROJECT**

**ORDINANCE NO. 4072 - BUDGET AMENDMENT FOR THE WILMA DYKEMAN RIVERWAY GRANT FUND**

Summary: The consideration of (1) a resolution authorizing the City Manager to execute change orders to the contract with CDM-Smith for an environmental assessment for a portion of the Wilma Dykeman Riverway Project; and (2) a budget amendment, in the amount of $19,569, from the Grant Fund reserves to the Wilma Dykeman Riverway Grant Fund.

The City of Asheville is involved in a process to prepare a federal Environmental Assessment for a portion of the Wilma Dykeman Riverway Project that has come to be known as the RADTIP (River Arts District Transportation Improvement Project). The RADTIP will ultimately construct roadway improvements, sidewalks, bike lanes and greenway along Lyman Street and part of Riverside Drive.

The City's consultant, CDM-Smith (formerly Wilbur Smith Associates), has been leading an extensive process involving public involvement, design, and technical documentation of environmental impacts. Up to this point the study has been carried out using 100% federal funding.

During the environmental study it was determined that the potential impacts to historic properties in the RADTIP area would require an additional level of study known as a Section 106 evaluation. The Section 106 evaluation and required public outreach necessitate a need to change the scope of work for CDM-Smith.

The cost of additional work required to complete the environmental study is $49,847. There are federal funds in the project in the amount of $30,278 to fund a portion of this additional work. The remaining $19,569 will have to come from City funds. Staff is proposing that Council appropriate this amount from the City's Grant Fund reserves.

Work is continuing on the project and city staff anticipates we will have a federally-approved environmental document by September of this year. The additional work is necessary if that goal is to be met. CDM Smith proposes to sub-contract with the firms of Matthews Architecture and LandDesign for a portion of the work.

This project supports the City of Asheville's Strategic Operating Plan under the goals of Multi-Modal Transportation and Job Growth and Community Development. In addition the project supports implementation of numerous master plans including the Wilma Dykeman Riverway Plan, Sustainable Economic Development Plan, Greenway Master Plan, and the 2025 City Development Plan.

Pro:

- The additional documentation is required in order to obtain federal approval for the project.

Con:

- Requires the use of $19,569 in City of Asheville funds.

As noted above, the $19,569 needed for this budget amendment will be appropriated from the Grant Fund reserves. There is currently $21,853 in Grant Fund reserves; after this appropriation there will be $2,284 remaining for future use. This appropriation will have no impact on General Fund fund balance.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to execute change orders to the contract with CDM-Smith for an environmental assessment for a portion of the Wilma Dykeman Riverway Project; and (2) a budget amendment, in the amount of $19,569, from the Grant Fund reserves to the Wilma Dykeman Riverway Grant Fund.

**RESOLUTION BOOK NO. 34 – PAGE 334**
**ORDINANCE BOOK NO. 27 – PAGE 341**

**F. ORDINANCE NO. 4073 - BUDGET AMENDMENT FOR CONTRIBUTIONS TO SUPPORT RECREATION PROGRAMS**

Summary: The consideration of a budget amendment, in the amount of $8,700, for contributions to support recreation programs.

The City of Asheville in the Parks, Recreation & Cultural Arts Department has received contributions to support programming and special projects within the department operations. Description is listed below:

- $8,700 from miscellaneous donations to support therapeutic recreation and youth programs and community centers

This action complies with the City Council Strategic Goal of fiscal responsibility in that it provides an alternative for enhancing the city's commitment to master plan implementation. This action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it will 1) increase department funding with alternative funding via donations, and 2) enhance the department's means to respond to identified programming priorities.

Pros:

- Expansion of programming opportunities will be provided
- Equipment purchases will enhance the customer experience

Con:

- None

The City's Fiscal Year 2011/2012 General Fund operating budget for Parks, Recreation & Cultural Arts will increase by $8,700. This increase is funded by $8,700 in contributions from miscellaneous contributions. Thus, there is no net fiscal impact to the City's budget.

Staff recommends City Council to adopt the budget amendment in the amount of $8,700, for contributions to support recreation programs.

**ORDINANCE BOOK NO. 27 – PAGE** 343

**G. ORDINANCE NO. 4074 - BUDGET AMENDMENT FOR COMMUNICATION CENTER ANTENNA REPAIRS**

Summary: The consideration of a budget amendment, in the amount of $18,000, to appropriate funds received from Buncombe County for Communication Center antenna repairs.

In September 2003, the City and Buncombe County entered into an intergovernmental agreement for the establishment of a consolidated public safety communication center. In September 2009, both parties agreed to an addendum to the original agreement which served as the formal joint agreement for the operation of the consolidated center. As a part of that agreement, Buncombe County agreed to make annual payments to the City for costs associated with City radio equipment located in the consolidated call center and the redundant call center that is located in the Municipal Building. The first year payment, which as due in March 2010, was set at $67,500, and the payment has been adjusted annually since then based on the Consumer Price Index (CPI). To date, the City has received $167,504.98 from the County to be used for this purpose.

Staff is recommending that Council appropriate $18,000 from these funds to repair antenna equipment used for Police and Fire dispatching at the Consolidated Communications Center. The repairs will allow continued use of radios by Police and Fire Telecommunicators in the event of an equipment failure ensuring continuity of City of Asheville Public Safety operations.

This action complies with the City Council Strategic Operating Plan goal to "Leverage internal and external partnerships for pursuing capital improvements and infrastructure projects."

Pros:

- Increased backup radio coverage in the Consolidated Communications Center.
- Increased ability to utilize cost effective equipment to provide reliable backup communications for the Asheville Police Department as well as the Asheville Fire Department.

Con:

- None.

As noted above, the City has received $167,504.98 in payments from Buncombe County to date. Appropriation of the $18,000 needed for the antenna repairs will leave an available balance of $149,504.98. The remaining funds, along with the additional annual payments that are received from Buncombe County, will be used toward expenses related to the City of Asheville's radio dispatch operations in the Consolidated Communications Center. The City will receive its next payment from Buncombe County in March 2013. This budget amendment has no impact on General Fund fund balance.

City staff recommends City Council approve the budget amendment in the amount of $18,000 to appropriate funds received from Buncombe County for Communication Center antenna repairs.

**ORDINANCE BOOK NO. 27 - PAGE 345**

**H. RESOLUTION NO. 12-80 - RESOLUTION ADOPTING CITY COUNCIL'S 2012-13 STRATEGIC OPERATING PLAN**

Summary: The consideration of a resolution reaffirming City Council's Strategic Operating Plan for fiscal year 2012 – 2013.

At the February 3, 2012, retreat, the Asheville City Council reaffirmed its commitment to six key focus areas that serve as the foundation for the City of Asheville's Strategic Operating Plan. These focus areas are:

- **Affordable** - The City of Asheville will offer a standard of living that is affordable and attainable for people of all income levels, life stages and abilities.
- **Fiscal Responsibility** - The City of Asheville will support a stronger, more prosperous community by making smart investments that accomplish lasting, tangible returns.
- **Green & Sustainable** - Asheville will be the southeastern leader in clean energy and environmental sustainability.
- **Job Growth and Community Development** – Asheville will support a dynamic and robust local economy with balanced sustainable growth.
- **Safe** - Asheville will be one of the safest and most secure communities when compared to similar cities.
- **Multimodal Transportation** – Integrate and implement a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit, greenways, streets, rivers and access to river, and other system improvements resulting in a funding priority list.

*Performance Measurement and Reporting*

During the 2011-2012 fiscal year, City staff continued to provide City Council with quarterly management reports on performance tied to the organization's adopted strategic goals and related initiatives.

Moving forward with the comprehensive quarterly management report, Council will continue to incorporate quarterly updates from each Council Committee Chair. Each Chair will present to the Council on policy initiatives designed to further achievement of the strategic goals.

Pros:

- Provides Council and City staff with an overall direction and goals of the organization.
- Provides Council and City staff with a measure of success.

Cons:

- None noted

The Strategic Operating Plan will provide direction for Council and the Executive Management Team throughout the budget process.

City staff recommends that City Council adopt the resolution reaffirming Council's Strategic Operating Plan.

**RESOLUTION BOOK NO. 34 – PAGE 335**

**I. RESOLUTION NO. 12-81 - RESOLUTION ACCEPTING COURT PLAZA AS A CITY-MAINTAINED STREET**

Summary: The consideration of a resolution to accept Court Plaza as a city-maintained street.

Code of Ordinances sec. 7-15-1(f)(4)a requires that streets dedicated for public use be accepted by resolution of the City Council.

City Council took action to close the streets located in the area known as City/County Plaza on May 23, 2006 (Ordinance # 06-110) in order to construct the new Pack Square Park. Specifically, the streets that were closed included Court Plaza, City Hall Drive North, City Hall Drive South, and City Hall Circle (see Attachment 2). Buncombe County agreed with the closures.

Court Plaza from College Street to its dead-end has an average width of 26 feet, standup curb, and an overall length of 0.12 mile including the two traffic circles.

The park is now completed and Court Plaza is the only remaining "closed" street. It needs to be added back as a city-maintained street in order to officially provide public access to the Buncombe County Court House and City Hall.

Following City Council's approval of this resolution, the subject street will be added to the official Powell Bill List.

This action complies with the City Council 2011-12 Strategic Operating Plan within the Fiscal Responsibility Area by accepting street infra-structure to help support the healthy growth of the City.

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help maintain the street.
- The street provides access and connectivity to the Buncombe County Court House and City Hall.

Con:

- Powell Bill Funds will not cover 100% of the total cost to maintain the street.

There will be no initial financial impact to the City, although the responsibility of maintenance belongs to the Public Works Department and is included in the operating budget. The City will receive Powell Bill Funds in the future to help maintain the streets.

Staff recommends that City Council accept Court Plaza as a city-maintained street.

**RESOLUTION BOOK NO. 34 – PAGE 339**

**J. RESOLUTION NO. 12-82 - RESOLUTION CONFIRMING CITY COUNCIL SUPPORT OF PARTICIPATION IN THE YWCA'S "STAND AGAINST RACISM' EVENT ON APRIL 27, 2012**

Summary: The consideration of a resolution supporting the City's participation in the YWCA's "Stand against Racism" effort.

The YWCA of Asheville is participating in a nationwide "Stand against Racism" event to be held April 27, 2012, and has requested community organizations plan events in support of the overall effort to acknowledge racism still exists in our community.

The City of Asheville will organize an event that was successful last year: a walking diversity tour of downtown. Approximately 15 -20 employees from the City of Asheville received training prior to the event from the Center for Diversity Education. City employees will use their lunch hour to sign up for time slots throughout the day in which they would walk the predetermined .5 mile route, led in groups by the trained peer guides, through downtown Asheville.

The tour will examine areas within a short distance of City Hall that are significant to the stories of women's suffrage, the history of slavery and civil rights, the impact of Native Americans, Jewish business and the Scots-Irish in the growth of Asheville as a center of commerce, how the LGBT, Hispanic, Asian and eastern European/Slavic communities contribute to the economic and cultural health of our community and why the changing face of our city, county and region is important to and impacts each of us as citizens and/or employees.

A virtual version of the tour will be made available to employees who are not able to participate due to physical or scheduling limitations.

Short video interviews in which participants share what standing against racism means to them would be taped as groups complete their walk. The interviews would then be posted on City of Asheville websites.

Pros:

- Participation in the event will allow individuals the opportunity to express their desire to stand against racism during their lunch hour.
- The walk and associated videos will make a visual statement about the City's support of YWCA of Asheville's mission of ending racism.
- The walk also meets Asheville Balanced Choices (ABC's) employee wellness goals for increased physical activity opportunities.
- The event is an expression of the City of Asheville's core value of Diversity.
- The walking tours are planned to continue beyond the Stand against Racism throughout the year to highlight the City of Asheville's year-round commitment to value and highlight diversity in our community.

Con:

- Eradicating racism involves much more than making a visual statement.

As participation in the event would take place during employee lunch hours, there is no fiscal impact involved in organizing the walk. The training and subsequent walking tours are part of an ongoing diversity initiative that is supported by management as an important component of employee training and development.

City staff recommends City Council adopt a resolution of support for a City of Asheville walking diversity tour in support of the YWCA's "Stand against Racism" effort.

Councilman Smith encouraged everyone to participate in the YWCA's event.

**RESOLUTION BOOK NO. 34 – PAGE 343**

**K. RESOLUTION NO. 12-83 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE CONTRACT WITH TRIANGLE J COUNCIL OF GOVERNMENTS FOR THE CAROLINA BLUE SKIES INITIATIVE GRANT**

**ORDINANCE NO. 4075 - BUDGET AMENDMENT FOR ADDITIONAL GRANT FUNDS FOR THE CNG STATION AND VEHICLES**

Summary: The consideration of a resolution authorizing the City Manager to accept subgrantee funds via the Triangle J Council of Governments from the Dept. of Energy Clean Cities grant, and the associated budget amendment in the amount of $51,380.

The purpose of this grant is to upgrade 28 fleet vehicles to CNG and expand the capacity of the existing City of Asheville CNG station. The intent of this grant is to improve air quality by retrofitting vehicles to run on compressed natural gas instead of diesel. City Council approved acceptance of this stimulus grant in August 2010. The budget amendment is to accept additional funds which will pay to convert three dump trucks instead of three pick-up trucks. The dump truck conversions as slightly more expensive but will use much more fuel than pick-up trucks and therefore reduce have a better impact on air quality.

This action complies with City Council's Strategic Operation Plan in the following ways: (1) Identify resources for strategic initiatives and create meaningful performance measures for programs and services; (2) Work with regional partners to create incentives for green building, energy conservation and energy independence; and (3) Identify strategies and costs for increasing the city's annual energy reduction goal to 4%

Pro:

- Support municipal carbon reduction efforts

Con:

- None identified

This project is entirely funded with grant proceeds, so there is no impact on the City's annual operating budget.

Staff recommends City Council authorize the City Manager to accept subgrantee funds via the Triangle J Council of Governments from the Dept. of Energy Clean Cities grant, and the associated budget amendment in the amount of $51,380.

**RESOLUTION BOOK NO. 34 – PAGE 344**
**ORDINANCE BOOK NO. 27 – PAGE 347**

**L. RESOLUTION NO. 12-84 - RESOLUTION AUTHORIZING CITY OFFICIALS TO EXECUTE AND DELIVER AN INSTALLMENT FINANCING CONTRACT FOR**

**VARIOUS CAPITAL PROJECTS AND ACQUISITIONS AS WELL AS THE REFINANCING OF EXISTING DEBT**

Summary: The consideration of a resolution authorizing City officials to execute and deliver an installment financing contract for various capital projects and acquisitions as well as the refinancing of existing debt.

On December 13, 2011, City Council approved a Resolution authorizing the negotiation of an installment financing contract in an amount not to exceed $50 million for: (1) "new money" for Council approved capital projects authorized as part of the FY 2012 and FY 2011 Budgets, (2) the takeout of the interim note on the 51 Biltmore Parking Deck project and (3) the refinancing of some existing debt to achieve financial savings. On January 10, 2012, City Council held a public hearing consistent with Section 160A-20 of the General Statutes of North Carolina, which require installment financing contracts involving real property to include a public hearing in which the public may comment on the proposed financing.

Since that time, City staff has been working with the Local Government Commission (LGC), bond counsel and underwriters to complete the bond disclosure and financing documents. The LGC has scheduled its approval of the transaction on May 1 with the bond sales to occur on May 24 with closing on June 6.

The Resolution under consideration:

(1) Ratifies the various documents required to be issued in connection with the transaction;
(2) Authorizes the release of the official statement (bond prospectus), and;
(3) Authorizes the execution of various documents (Contract, Deed of Trust, Indenture of Trust and Contract of Purchase) by City officials.

Copies of the extensive bond legal documents are available in the City Clerk's office for review.

This action supports the City of Asheville's goal to operate the City to the highest level of fiscal responsibility by enhancing its commitment to infrastructure maintenance and capital improvements.

Pros:

- Allows the City to move forward with the FY 2012 debt financing to fund several critical facility and infrastructure projects.
- Refunding of existing debt results in financial savings and the reinvestment of those savings in the CIP.

Cons:

- None noted.

The total amount projected for identified capital projects and refinancing is approximately $45 million.

The projected annual debt service costs associated with the transaction range from $5.277 million to $1.25 million through 2032. The range of annual debt service payments over the life of the transaction is a function of several factors - the final payoff in 2021 of the debt being refinanced and components of the "new money" projects that are being financed over their useful lives of 4, 5, 10 and 20 years. The repayment of the "new money" debt issuance is incorporated in the debt management plan through the capacity being generated by the retirement of existing debt and a portion of the savings generated by the refunding. The refinancing of existing debt, at current market rates, is projected to produce about $1.1 million in cash flow savings through 2021.

Staff recommends that City Council approve the resolution as presented.

**RESOLUTION BOOK NO. 34 – PAGE 345**

Vice-Mayor Manheimer asked for public comments on any item on the Consent Agenda, but received none.

Vice-Mayor Manheimer said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Bothwell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

**III. PRESENTATIONS & REPORTS: None.**

**IV. PUBLIC HEARINGS: None.**

**V. UNFINISHED BUSINESS:**

**A. RESOLUTION NO. 12-85 - RESOLUTION CALLING FOR A PUBLIC HEARING ON APRIL 24, 2012, TO DEMONSTRATE SUPPORT AND SOLIDARITY BY ASHEVILLE WATER CUSTOMERS IN DEFENDING OWNERSHIP OF OUR WATER SYSTEM**

Councilman Pelly said we will be hearing from the state legislative committee on the management of our water system on August 19. Since the City has not had a formal hearing to give residents an opportunity to let their feelings known, this public hearing is requested to be set for that opportunity.

Councilman Pelly moved to set a public hearing on April 24, 2012, to demonstrate support and solidarity by Asheville water customers in defending ownership of its water system. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 350**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 12-86 - RESOLUTION IN SUPPORT OF EQUALITY AND IN OPPOSITION TO AMENDMENT ONE**

Councilman Gordon Smith presented the following resolution: "WHEREAS the core values of the City of Asheville include commitments to "value and respect a diverse community, workforce, and ideas," and to "value the safety and welfare of our employees and the citizens we serve;" and WHEREAS, the City of Asheville includes at least 737 same-sex couples and has the highest concentration of same-sex couples among North Carolina cities; and WHEREAS, the City of Asheville has adopted a policy of extending equal health care benefits to Asheville City Government employees who are in same-sex domestic partnerships; and WHEREAS, the Council passed a resolution establishing a Domestic Partnership Registry through which same-sex couples can register their relationships; and WHEREAS, the Council passed a resolution endorsing and supporting the rights of same-sex couples to share fully and equally in the familial rights and responsibilities of civil marriage in 2011; and WHEREAS, this Council recognizes that some local and national companies doing business in the City of Asheville extend equal health care benefits to employees in same-sex relationships; and WHEREAS, discriminatory marriage laws deprive same-sex couples and their children of fundamental rights and protections, including, but not limited to, health care coverage and related decision-making, access to

assisted-living facilities, decision making around funerals and end of life matters, inheritance rights, survivor benefits, child custody, and adoption rights; and WHEREAS, on May 8, 2012, the people of North Carolina will vote on Amendment One, a proposed amendment to the North Carolina State Constitution that would prohibit marriage between people of the same sex, and further prohibit the recognition of any other form of domestic legal union; and WHEREAS, the adoption of such a Constitutional amendment is inconsistent with the City's commitment to equal rights and opportunities for its residents and employees and could invalidate the City of Asheville's domestic partner benefits; and WHEREAS, the adoption of such a Constitutional amendment could invalidate local and national businesses' benefit policies; and WHEREAS, Asheville proudly embraces the diversity of its residents; NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: (1) The City Council opposes Amendment One; (2) Whether Amendment One passes or fails on May 8, 2012, the City Council reaffirms its commitment to equal rights and opportunities for City employees and for all residents and families of Asheville, including the rights of same-sex couples to share fully and equally in the rights, responsibilities, and commitments of civil marriage; and (3) This resolution shall be effective on and after its passage, and shall be shared with the members of Asheville's General Assembly delegation."

Councilman Smith said that to all the lesbian, gay, bi-sexual, transgender citizens of the State of North Carolina we care about you and we value equality and recognize the need for it, Even after May 9 we as a body will continue to care and fight for equality.

Councilman Bothwell urged people to vote against Amendment One, not only because of the rights of LGBT individuals, but because the Amendment is poorly worded and will have effects far beyond its original intent.

Councilman Hunt was proud to support the resolution, noting that the YWCA's "Stand Against Racism" examines areas "that are significant to the stories of women's suffrage, the history of slavery and civil rights, the impact of Native Americans, Jewish business and the Scots-Irish in the growth of Asheville as a center of commerce, how the LGBT, Hispanic, Asian and eastern European/Slavic communities contribute to the economic and cultural health of our community and why the changing face of our city, county and region is important to and impacts each of us as citizens and/or employees."

Councilman Pelly was also proud to support the resolution in that as a real estate agent he works with couples intensively for a couple of months and has noted that LGBT couples express the same love to each other and their children.

Mr. Tyler McCall, representing the Coalition to Protect all North Carolina families, spoke in support of the resolution, thanked City Council for their commitment to equality, and urged the community to become educated on the harm of Amendment One.

Councilman Smith noted that Asheville has come a long way in declaring its stance on the topic of equality.

Councilman Smith moved for the adoption of Resolution No. 12-86. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 351**

**B. DISCUSSION OF LIAISON TO THE GENERAL ASSEMBLY AND FEDERAL GOVERNMENT**

City Manager Jackson said that at Council's retreat a goal was set to explore whether or not there would be benefits to increasing the City's representation in the State General Assembly

and in the federal government processes. Staff gathered benchmarking information and shared it with Vice-Mayor Manheimer and Councilman Davis (who Council charged with this task).

Vice-Mayor Manheimer and Councilman Davis met with staff and reviewed the information. They recommended the Council authorize the City Manager to prepare a Request for Proposals for a federal liaison to help us identify and secure funding for projects that tend to be funded by the federal government. We feel that without representation we are missing out on some opportunities and that any cost associated with retaining such representation would more than pay for itself in the funding we would identify and secure.

She said that on the State side there is a more immediate and identifiable need to have someone in Raleigh to follow the water issue as well as any other issues affecting municipalities that we need to be able to hear about more than we are able to do from our remote location. Since that does not require a Request for Proposals, they recommended Council authorize staff to engage someone very soon to follow the issues for Asheville and get information back to Council.

When Vice-Mayor Manheimer asked for public comment, no one spoke.

Councilman Hunt felt that a presence in Raleigh is important, noting that Council will continue to build on relationships with other local government officials and our state legislators. He then moved to authorize staff to engage a state liaison to follow the issues for Asheville. This motion was seconded by Councilman Davis and carried unanimously.

Councilman Davis felt the urgency of having a liaison in Raleigh and urged Council to consider a more defined role for a staff member in the future to take this into a different realm. He hoped we would not just stop with representation in Raleigh, but for staff and Council to continue to be involved in addition to that representation.

Councilman Bothwell was not deeply opposed to the motion especially given the urgency of things affecting Asheville recently; however, he felt our delegation in Raleigh has an obligation to keep us apprised of what's going on that affects Asheville.

Councilman Hunt moved to authorize staff to authorize the City Manager to prepare a Request for Proposals for a federal liaison to help us identify and secure funding and monitor regulatory activity. This motion was seconded by Councilman Davis and carried unanimously.

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Rev. Christopher Chiaronmonte spoke about the need for accountability in leadership.

**Closed Session**

At 6:06 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: State of North Carolina; J. Jerome Jensen, Jr., eta al. (Biltmore Lake Annexation); cities of Rocky Mount, Goldsboro, Wilmington, Kinston, and Lexington; and Henderson County. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authorization is contained in G.S. 143-318.11(a)(4); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information

privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 7:01 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Hunt and carried unanimously.

**VIII. ADJOURNMENT:**

Councilman Davis adjourned the meeting at 7:01 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – April 24, 2012 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor Esther E. Manheimer, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Terry M. Bellamy

**PLEDGE OF ALLEGIANCE**

Vice-Mayor Manheimer led City Council in the Pledge of Allegiance.

**INVOCATION**

Vice-Mayor Manheimer gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING APRIL 25, 2012, AS "ADMINISTRATIVE PROFESSIONALS DAY"**

Vice-Mayor Manheimer read the proclamation proclaiming April 25, 2012, as "Administrative Professionals Day" in the City of Asheville. She presented the proclamation to Ms. Sandy Stotesbury, NC Division President, and Ms. Mary Ann Schiller, Land-of-the-Sky Chapter President, who briefed City Council on some activities taking place during the day.

**B. PROCLAMATION PROCLAIMING APRIL 29, 2012, AS "GIRLS ON THE RUN DAY"**

Councilman Bothwell read the proclamation proclaiming April 29, 2012, as "Girls on the Run Day" in the City of Asheville. He presented the proclamation to Ms. Audrey McElwain, Executive Director of Girls on the Run of WNC, and Ms. Rachelle Sorensen-Cox, who briefed City Council on some activities taking place during the day.

**C. PROCLAMATION PROCLAIMING MAY AS "FOSTER CARE MONTH MONTH"**

Councilman Hunt read the proclamation proclaiming May, 2012, as "Foster Care Month" in the City of Asheville. He presented the proclamation to Ms. Tara Foster, representing the Buncombe County Dept. of Human Services, who briefed City Council on some activities taking place during the month.

**D. PROCLAMATION PROCLAIMING MAY AS "MOTORCYCLE AWARENESS MONTH"**

Councilman Pelly read the proclamation proclaiming May, 2011, as "Motorcycle Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Steve Ensley who briefed City Council on some activities taking place during the month.

**E. PROCLAMATION PROCLAIMING MAY AS "STROKE AWARENESS MONTH"**

Councilman Davis read the proclamation proclaiming May, 2012, as "Stroke Awareness Month" in the City of Asheville. He presented the proclamation to Robin Jones, RN, Stroke Program Coordinator at Mission Hospital; Teri Giordano, Paramedic with Buncombe County EMS and Coordinator of Go Gray In

May Because Gray Matter Matters, who briefed City Council on some activities taking place during the month.

**F. PROCLAMATION PROCLAIMING MAY 6-12, 2012, AS "NATIONAL NURSES WEEK"**

Councilman Smith read the proclamation proclaiming May 6-12, 2012, as "National Nurses Week" in the City of Asheville. He presented the proclamation to Ms. Kathleen Guyette, Senior Vice President and Chief Nursing Officer of Mission Health, and nurses from Mission Hospital, who briefed City Council on some activities taking place during the week.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 10, 2012**

**B. MOTION SETTING A PUBLIC HEARING ON MAY 22, 2012, ON THE 2012-13 ANNUAL OPERATING BUDGET**

**C. RESOLUTION NO. 12-87 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUITE A LEASE AGREEMENT WITH RIVERLINK INC. FOR THE PURPOSE OF INSTALLING AND OPERATING PUBLIC PARKING AND PUBLIC RIVER ACCESS AT 706 RIVERSIDE DRIVE**

Summary: The consideration of a resolution authorizing the Mayor to execute a Lease Agreement with RiverLink, Inc. for the purpose of installing and operating public parking and public river access on city-owned real property at 706 Riverside Drive, Asheville, NC.

On November 22, 2011 RiverLink, Inc. presented information to the Asheville City Council on the organization's current revitalization focus at the intersection of Riverside Drive and Pearson Bridge Road. Within its stated mission to revitalize the French Broad River corridor, RiverLink, Inc. is seeking to establish a lease agreement for city owned property at 706 Riverside Drive. The purpose of this lease is to establish public parking and a future river access point for river recreation.

The property located at 706 Riverside Drive is approximately 0.46 acres. The land is undeveloped and encumbered with significant Metropolitan Sewerage District (MSD) sewer lines. A large portion of the property is contained within the French Broad River 100 year floodplain. Per the proposed Lease, RiverLink's responsibilities will include the installation and ongoing operation of a public parking lot and future river access point. All physical improvements are subject to the City approval, with the City to be responsible for placing signage on the property for public use. The proposed lease terms are as follows:

(1) Term of five years, with a five year renewal.
(2) Tenant responsibilities: Installation of all improvements, per zoning standards. Must maintain cleanliness of property, landscaping, improvements, clearing of debris.
(3) Mutual rights to terminate lease
(4) Public signage will be the responsibility of the City of Asheville
(5) Rental: In that property will be maintained for public use, rental is established at $1 per year
(6) Greenway: this property is intended for a future greenway. The City reserves the right to design and construct the greenway through the property as the eventual design dictates.
(7) Easements to remain in place: MSD sewer easements, power line easements

The Notice of Intent to enter into a Lease Agreement with RiverLink, Inc. was published on April 13, 2012, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the Lease Agreement is being requested.

This action complies with the City Council Strategic Operating Plan – Job Growth and Community Development Goal by supporting riverfront redevelopment with an area partner. In addition, this action supports the Wilma Dykeman Riverway Master Plan by encouraging riverfront revitalization.

Pro:

- Activates an under-utilized property along the French Broad River corridor

Con:

- None

No expenses or in-kind services are required of the city for this lease agreement except for the modest costs associated with public signage. The city will receive no rental income from this lease.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute the lease agreement with RiverLink, Inc. on behalf of the City of Asheville.

**RESOLUTION BOOK NO. 34 – PAGE 353**

**D. RESOLUTION NO. 12-88 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CAROLINA MOUNTAIN ROOFING FOR THE TRANSIT GARAGE ROOF REPLACEMENT PROJECT**

**ORDINANCE NO. 4076 - BUDGET AMENDMENT FOR THE TRANSIT GARAGE ROOF REPLACEMENT PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a contract in the amount of $152,925 and any change order within the budgeted amount with Carolina Mountain Roofing for the project known as Transit Garage roof replacement; and a budget ordinance amendment in the amount of $17,000 to move funds from the Transit Capital Reserve funds to the Transit garage roof repair project to increase the total project budget to $177,000.

The purpose of the project is to repair the roof at the transit operations garage. The subject building, which was constructed in 1971, is a one-story steel and masonry structure containing about 12,600 square feet. The current roof is an EPDM ballasted roof that was installed in 1985. The membrane on the roof has deteriorated to the point that leaking is occurring in the parking shed, vehicle maintenance area, and offices during rain events. This leaking not only creates a safety hazard with the electrical wiring and equipment in the garage but it has also caused the wood to rot around the skylights and flashing at the mechanical units.

The existing insulation has also been damaged and is therefore not energy efficient. It needs to be replaced in the areas where the water damage has occurred. We do not know at this time if any major structural damage has occurred.

The project would replace the existing roof with a new EPDM mechanically adhered roofing system, which would meet current energy conservation requirements and it would provide savings in energy consumption.

The City issued a Request for Qualifications and hired REI Engineers, Inc. (REI) on April 14, 2011, as the engineering firm to design, develop the technical specifications, and manage the construction project. REI developed the specifications and the city released the construction bid on July 22, 2011. The bids received were higher than the budget available and the bid was not awarded. On November 22 2011 City Council approved a capital project budget for the transit operations garage roof repair in the amount of $160,000.

REI developed new specifications to bid the project again. An informal request for bids was issued on January 30, 2012 and bids were opened on February 23, 2012. Carolina Mountain Roofing was the responsive low bidder at $152,925.

The budget set aside for this project is not enough to cover construction costs and engineering fees. Therefore, city staff is requesting the reallocation of $17,000 in the CIP budget from the Transit Capital Reserve funds to the roof project to be able to complete the necessary roof repairs. The total cost of the project will now be $177,000. Due to constraints in the grant allocation Federal Funds will provide 72% of the cost, which equates to $128,000 and the remaining $49,000 will come from the local match.

The project is scheduled to take place during the next three months.

This action complies with the City Council 2011-12 Strategic Operating Plan within the fiscal responsibility focus area by operating the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- Provides needed maintenance to an aging facility.
- Helps to make the building safe and more energy efficient which should generate savings in energy consumption.
- Federal Funds will provide 72% of the total project cost, which equates to $128,000.

Cons:

- The total cost of the project is $177,000.
- The City's share of the total cost of the project is $49,000.

There is currently $74,000 available in the Transit capital reserve project that has accumulated from projects that came in under budget. Staff is recommending that Council appropriate $17,000 from the reserves to cover the increased cost of the garage roof repairs. After this appropriation, there will be approximately $57,000 available for future allocation.

Staff recommends that City Council adopt (1) a resolution authorizing the City Manager to execute a contract with Carolina Mountain Roofing for the project known as Transit Garage roof replacement; and (2) a budget ordinance amendment to reallocate $17,000 from the Transit Capital Reserve funds to the project budget for the Transit Operations Garage roof repair project.

**RESOLUTION BOOK NO. 34 – PAGE 354**
**ORDINANCE BOOK NO. 27 - PAGE 349**

**E. RESOLUTION NO. 12-89 - RESOLUTION DECLARING THE INTENT OF THE CITY TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE ACQUISITION OF COMPUTERES AND RELATED EQUIPMENT FROM THE PROCEEDS OF AN INSTALLMENT FINANCING CONTRACT TO BE EXECUTED AND DELIVERED IN FISCAL YEAR 2012**

**ORDINANCE NO. 4077 - BUDGET AMENDMENT FOR PERSONAL COMPUTER REPLACEMENTS**

Summary: The consideration of a resolution authorizing the reimbursement of the City from proceeds of the financing for project expenses incurred prior to the execution of the installment purchase contract; and a budget amendment, in the amount of $115,000 from debt proceeds, for the purchase of lifecycle replacements for computers and related equipment.

In previous years, the City of Asheville has used an operational lease for computer equipment. This offered the operational benefit of a lifecycle replacement for computers every four years, which allowed for more reliable computing for employees. However, during staff analysis during the operational lease rebid process, staff chose to move away from the operational lease model for several reasons.

First, during difficult budget years, when computers are purchased, rather than leased, an extension of the lifecycle is at zero cost. Second, according to staff financial analysis, it has the potential to save between 12-30% on payments.

The purchase of the computer equipment is the second of a 5-step process. The purchase will be from state and other authorized contracts. To execute the purchase, staff seeks authorization for both a budget amendment as well as a reimbursement resolution. When the FY 2011-12 budget was adopted, staff had not finalized its plan to purchase rather than lease computers, therefore only the operational lease costs were included in the adopted budget, not the purchase price. In September, Council approved a $350,000 budget amendment for the purchase of the first round of computer replacements. This second budget amendment, which is for $115,000, will provide funding for the next round of replacements that will occur in this fiscal year. The revenue to support this purchase will come from debt proceeds. The money that was budgeted for the remaining operational lease payments will be redirected to pay debt service on this financing. The purpose of the Reimbursement Resolution is to provide the City with the ability to move forward with the project and reimburse its accounts upon the issuance of the debt. The Resolution does not specifically authorize the issuance of the debt.

This action complies with City Council's strategic operating plan, specifically the Fiscal Responsibility goal of making smart investments

Pros:

- Continue to offer the lifecycle replacement, allowing for more reliable computing for employees
- Save between 12-30% on lease payments

Con:

- In the past, with an operational lease, keeping old computers had a cost, making the decision to replace the computers with modern equipment an easy one. With the new capital lease, there is no cost to retain old computers, and it may be tempting to leave old, obsolete computers in place.

As noted above, the purchase of the computer replacements will be funded with debt proceeds. The savings from the operational lease payments will be used to pay the debt service on this borrowing.

City staff recommends that City Council adopt (1) a resolution authorizing the reimbursement of the City from proceeds of the financing for project expenses incurred prior to the execution of the installment purchase contract; and (2) a budget amendment, in the amount of $115,000 from debt proceeds, for the purchase of lifecycle replacements for computers and related equipment.

**RESOLUTION BOOK NO. 34 – PAGE 355**
**ORDINANCE NO. 27 – PAGE 351**

**F. RESOLUTION NO. 12-90 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SERVICE AGREEMENT WITH BLUE CROSS BLUE SHIELD OF NORTH CAROLINA FOR THIRD PARTY ADMINISTRATOR SERVICES FOR THE CITY'S HEALTH INSURANCE PLAN**

Summary: The consideration of a resolution authorizing the City Manager to enter in to a service agreement with the City of Asheville and Blue Cross Blue Shield of North Carolina for Third Party Administrator services for the City of Asheville's health insurance plan.

The City of Asheville is required to provide health insurance for our City employees. In an effort to promote Council's employer of choice strategic goal by providing the best and most cost effective benefit plan and providers for our employees, the City of Asheville utilized a formal bidding process for health insurance providers as Third Party Administrators (TPA). The City utilized our brokerage firm, The Ferguson Employee Benefit Agency, to facilitate this process. We received 15 proposals in response to our Request for Proposals. The Ferguson Employee Benefit Agency worked with staff to review each proposal. Staff heard presentations from four of the TPAs. Evaluation of the proposals included items

such as; experience in doing business in Western North Carolina, cost, network coverage and discounts, ability to support the Asheville Project, consumer tools, employee satisfaction.

After a thorough review the vendor selected is Blue Cross Blue Shield of NC.

This action aligns with City Council's Strategic Operating Plan in that it is an effort to promote Council's employer of choice strategic by providing the best and most cost effective benefit plan and providers for our employees

Pros:

- BCBS network discounts.
- Expanded Network access to employees and covered lives outside of the region.
- Enhanced online tools for consumers and practitioners.
- Web and phone support tools for employees to include online disease management and cost comparison tools.

Con:

- Possible transition issues that normally may occur when switching providers of these services.

The projected administrative costs for the new TPA service contract are $660,950 for the first year, which represents a 47% increase over the current year fees. This increase is due primarily to BCBS's network access fee, however based on thorough analysis this increase will be offset by the network discounts received by utilizing the BCBS network.

Analysis was done by an independent firm that reviewed a total of twelve months of recent claims history comparing current discounts wit those offered by the BCBS Network. In addition, Ferguson Employee Benefit Agency did a review comparing the top 100 codes by frequency, top 50 providers by cost, and top 10 hospitals by cost to further validate the results and ensure that network discounts were substantial enough to offset the increased administrative costs.

The City will be consolidating pharmacy benefits with BCBS eliminating other administrative expenses/costs associated with our current Pharmacy Benefit Manager and BCBS will also assume responsibility for managing the network access for mental health services. Funding for this contract is budgeted in the Health Insurance Fund.

City staff recommends City Council adopt resolutions authorizing the City Manager to enter in to service agreements with the City of Asheville and BCBS for Third Party Administrator services for the City of Asheville's health insurance plan.

**RESOLUTION BOOK NO. 34 – PAGE 357**

**G. RESOLUTION NO. 12-91 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER TO THE CURRENT CONTRACT WITH RIVERTOP CONTRACTING INC. FOR PACK SQUARE PARK MAINTENANCE TO ADD FOUNTAIN AND ADDITIONAL GROUNDS MAINTNEANCE AND TO EXECUTE AN AMENDMENT TO THE CURRENT CONTRACT INCORPORATING THESE CHANGES**

Summary: The consideration of a resolution authorizing the City Manager to execute a change order to the current contract with Rivertop Contracting, Inc. for Pack Square Park grounds maintenance to add fountain and additional grounds maintenance in the amount of $33,362 and to execute an amendment to the current contract incorporating these changes.

The City of Asheville is responsible for the maintenance of Pack Square Park and contracts with Rivertop Contracting, Inc. for maintenance at this location. Since entering into the contract with Rivertop, it has been determined to add specialized maintenance services for the three fountains located in the park, and to add general ground maintenance at the new pavilion which is about to open in the park. The cost to add these services to the current contract is $33,362, which is budgeted within the FY 2011-2012 adopted operating budget for Pack Square Park.

Pack Square Park Budget

| | | | |
|---|---|---|---|
| Revenue: | | $150,000 | City of Asheville |
| | | $150,000 | Buncombe County |
| | Total | $300,000 | |
| Expense: | | $90,000 | Rivertop Maintenance Contract |
| | | $33,362 | Rivertop Maintenance Contract Change Order |
| | Total | $123,362 | |
| (Over)/Under | | $176,638 | |

This action complies with the Parks, Recreation, Cultural Arts, and Greenways Master Plan in that the expanded contract will support a higher level of maintenance delivery for Pack Square Park.

Pros:

- Enables the City to maintain the pavilion area and the three fountains in Pack Square Park Pavilion Site at the level of maintenance standards required at this location.
- Provides for daily pavilion and fountain maintenance on a daily basis.

Con:

- None

The $33,362 to support the increased cost in the Pack Square Park contract is budgeted in the FY 2011-2012 Parks, Recreation & Cultural Arts Department operating budget as part of the Pack Square Park budget. In addition to funding the park maintenance contract, the $300,000 Pack Square Park budget is designed to support utilities and supply costs associated with operating park. The City and Buncombe County evenly split the operating costs associated with the Park.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute a change order to the current contract with Rivertop Contracting, Inc. for Pack Square Park grounds maintenance to add fountain and additional grounds maintenance in the amount of $33,362 and to execute an amendment to the current contract incorporating these changes.

**RESOLUTION BOOK NO. 34 – PAGE 358**

**H. RESOLUTION NO. 12-92 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION APPROVING THE REPLACEMENT OF BRIDGE OVER POND ROAD AND HOMINY CREEK ON I-26**

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N.C. Dept. of Transportation (NCDOT) approving the replacement of Bridge # 235 and # 238 over SR 3431 (Pond Road) and Hominy Creek on I-26.

The NCDOT plans to replace Bridge # 235 and # 238 over SR 3431 (Pond Road) and Hominy Creek on I-26. As a part of the agreement, the City agrees to effect the necessary adjustment of any utilities under franchise without cost to the NCDOT and to provide for the adjustment of any municipally-owned utilities without cost to the NCDOT, except that the NCDOT will reimburse the City in accordance

with the NCDOT's Municipally-Owned Utility Policy. These requirements are standard requirements in all of NCDOT's Municipal Agreements and may or may not be applicable for a specific project. Since the City of Asheville does not have any utilities under franchise, this specific requirement is not applicable. The Water Resources Department has reviewed the proposed project plans and has confirmed that municipally-owned water lines will not be relocated as a part of the subject project; therefore, a separate utility agreement, detailing the specific requirements and associated costs, is not needed.

The NCDOT has confirmed that the subject municipal agreement does not require a financial commitment.

This action complies with the City Council 2011-12 Strategic Operating Plan by partnering with the NCDOT to make improvements to the existing street infra-structure.

Pros:

- Two existing sub-standard bridges along the interstate highway system will be replaced.
- The NCDOT is funding and constructing the project.

Con:

- There are no identifiable cons.

There is no estimated cost to the City.

Staff recommends that City Council approve a resolution authorizing the City Manager to sign a municipal agreement with the NCDOT formally approving Project B-5178.

**RESOLUTION BOOK NO. 34 – PAGE 359**

**I. ORDINANCE NO. 4078 - BUDGET AMENDMENT FOR TWO PART-TIME TEMPORARY INTERNS**

Summary: The consideration of a budget amendment, in the amount of $ 3,600, from Warren Wilson College, to appropriate revenue and budget expenditure accounts associated with the payment for two part time temporary interns.

The City of Asheville and Warren Wilson College (WWC) formed a strategic partnership in June 2007 to collaborate in our efforts to reduce green house gas emissions. A valuable part of this partnership is to provide professional development opportunity to WWC students. Warren Wilson College will provide the funds for payment to these interns upon approval of this budget amendment request.

The Sustainability Education Intern will support energy efficiency outreach efforts in the Office of Sustainability. The Transit Intern will support information gathering for transit routes in the Transportation Department.

This action complies with the City Council Strategic Operating Plan in the following ways: (1) Seek efficiencies in master plan implementation by identifying plan interdependencies, funding sources and key partnerships; (2) Expand partnerships with institutions to achieve common goals; (3) Identify strategies and costs for increasing the city's annual energy reduction goal to 4%.

Pros:

- Internship supports the Transportation Department in implementing the Transit Master Plan
- Internship supports the City Office of Sustainability efforts to reduce carbon footprint of city operations

Cons:

- None identified.

The $3,600 for the interns' stipend will be funded through Warren Wilson College to be paid through the City of Asheville.

City staff recommends City Council adopt the budget amendment to appropriate revenue and budget expenditures associated with payment of an interns stipend.

**ORDINANCE BOOK NO. 27 – PAGE 353**

**J. RESOLUTION NO. 12-93 - RESOLUTION OF INTENT TO CLOSE A PORTION OF VICTORIA ROAD AND SET THE PUBLIC HEARING ON MAY 22, 2012**

Summary: The consideration of a resolution of intent to permanently close a portion of Victoria Road, and setting a public hearing on May 22, 2012.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjacent property owner Mission Hospital Inc. and Aycock Jr. and Owen E. et al William R has requested the City of Asheville to permanently close a portion of Victoria Road.

The proposed permanent closure of a portion of Victoria Road was on the Greenway Commission's agenda at their regular meeting on April 12, 2012, and they approved the closure unanimously.

This closure allows for maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of intent to permanently close a portion of Victoria Road, and setting a public hearing on May 22, 2012.

**RESOLUTION BOOK NO. 34 – PAGE 360**

**K. RESOLUTION NO. 12-94 - RESOLUTION OF INTENT TO CLOSE AN UNNAMED ALLEY IN BILTMORE VILLAGE AND SET THE PUBLIC HEARING ON MAY 22, 2012**

Summary: The consideration of a resolution of intent to permanently close an unnamed alley in Biltmore Village, and setting a public hearing on May 22, 2012.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjacent property owner's John William Bell Jr., Janis E. Bell and Wachovia Bank and Trust Company have requested the City of Asheville to permanently close an unnamed alley in Biltmore Village.

The proposed permanent closure of an unnamed alley in Biltmore Village was placed on the Greenway Commission's agenda at their regular meeting on April 12, 2012, and they approved the closure unanimously

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of intent to permanently close an unnamed alley in Biltmore Village, and setting a public hearing on May 22, 2012.

**RESOLUTION BOOK NO. 34 – PAGE 362**

**L. RESOLUTION NO. 12-95 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH SITE DEVELOPMENT CORPORATION FOR THE NORTH LOUISIANA SIDEWALK IMPROVEMENTS PROJECT – EMMA ELEMENTARY SCHOOL TO MALLARD DRIVE**

Summary: The consideration of a resolution authorizing the City Manager to execute on behalf of the City of Asheville a contract in the amount of $189,145.50 and any change order within the budgeted amount with Site Development Corporation for the project known as North Louisiana Avenue Sidewalk Improvements – Emma Elementary School to Mallard Drive, TIP# SR-5001D, City of Asheville Project # ENG-08-09-002.

The City of Asheville will receive $250,000 from FHWA through a Safe Routes to School grant to fund the project. A formal request for bids was issued on March 12th, 2012 and bids were opened on April 10th, 2012. Site Development Corporation, a business from Cliffside, NC, was the low bidder at $189,145.50. The disadvantaged business enterprise (DBE) goal of 4.0% was exceeded at 5.15%. This is a unit price contract and not a lump sum contract.

This project will build much needed sidewalk along North Louisiana Avenue. Pedestrians currently must walk on the side of the road, in a ditch, or in the street itself. Many children use this thoroughfare as well to reach Emma Elementary School. This project is not within the City limits, but is in the ETJ. The community has been active in getting this project underway and has garnered the support of the City of Asheville, NCDOT, and Buncombe County through a municipal agreement. The scope of work includes sidewalk, curb and gutter, drainage, retaining walls, wheelchair ramps, driveways, and utility relocation.

This action complies with the City Council Strategic Operating Plan in fully leveraging funding from the State and other sources for regional transportation improvements.

Pros:

- Improves pedestrian safety.
- Funded by a Safe Routes to School grant, with no City General Fund contribution.
- Encourages walking, thereby reducing carbon emissions.
- Future maintenance will be paid for by Buncombe County.

Cons:

- The City could be contracted by Buncombe County for future maintenance of the project.
- Project management and contract administration will consume staff time.

This project will bring $189,145.50 of transportation infrastructure improvements at minimal cost to the City. There is a total of $250,000 budgeted for this project. As noted above, this project is fully funded with grant proceeds.

City staff recommends City Council adopt a resolution awarding the contract to Site Development Corporation and authorizing the City Manager to execute on behalf of the City of Asheville the contract and any change order within the budgeted amount.

**RESOLUTION BOOK NO. 34 – PAGE 363**

**M. MOTION RESCHEDULING THE PUBLIC HEARING ON THE MUNICIPAL SERVICE DISTRICT FOR DOWNTOWN ASHEVILLE FROM MAY 22, 2012, TO JUNE 12, 2012**

**N. RESOLUTION NO. 12-96 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT TO EASEMENT FOR PACK PLACE EDUCATE ARTS & SCIENCE CENTER**

Summary: The consideration of a resolution authorizing the City Manager to execute an amendment to an easement to allow for the installation of electrical service lines for a sign on the western or Biltmore Avenue façade of Pack Place.

The City owns the real estate on which Pack Place Education Arts & Science Center is located. Pursuant to a complex set of agreements, and as owner of the property, the City has the authority to grant easements for various purposes in connection with the operation of Pack Place.

The Diana Wortham Theatre is one of the facilities located in Pack Place. As part of the reallocation of space within the building, the main entrance to Pack Place that is on Pack Square will be used primarily by the Art Museum, and the main entrance to the Diana Wortham Theatre and the Colburn Earth Science Museum is being moved to the courtyard, which is accessed from Biltmore Avenue. In connection with this move, Diana Wortham Theatre proposes to locate a sign on the Biltmore Avenue façade of the building. The sign will also serve the Colburn Museum. In order to provide electrical power to the sign, it is necessary to run a conduit through the courtyard, which is essentially unimproved common area under the control of the City of Asheville. The conduit will be installed in an unobtrusive manner, and a conceptual drawing of the façade sign will be available at the Council meeting, if not attached.

This action aligns with City Council's Strategic Operating Plan in the goal of supporting a vibrant and active center city, as expressed in the Downtown Master Plan.

Pros:

- Allows for better identification of the entrance to Diana Wortham Theatre and the Colburn Earth Science Museum.
- Supports the renovation of Pack Place.

Cons:

- Slight additional burden on an existing easement.

Recited consideration of $10 to the City. Negligible financial impact.

Adoption of the resolution is recommended.

**RESOLUTION BOOK NO. 34 – PAGE 364**

Vice-Mayor Manheimer asked for public comments on any item on the Consent Agenda, but received none.

Vice-Mayor Manheimer said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Smith moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Hunt and carried unanimously.

**III. PRESENTATIONS & REPORTS: None**

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER ADOPTION OF THE CONSOLIDATED ACTION PLAN FOR FISCAL YEAR 2012 WHICH SETS OUT THE PROPOSED USE OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP ACT FUNDS**

**RESOLUTION NO. 12-97 - RESOLUTION ADOPTING THE CONSOLIDATED ACTION PLAN FOR FISCAL YEAR 2012 WHICH SETS OUT THE PROPOSED USE OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP ACT FUNDS**

Community Development Director Jeff Staudinger said that this is a public hearing to receive comments regarding the proposed Consolidated Action Plan for Fiscal Year (FY) 2012-2013, which sets out the proposed use of federal Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) funds for the coming fiscal year; followed immediately by Council's consideration of a resolution authorizing submission of this Consolidated Action Plan to the US Department of Housing and Urban Development.

The City will have available an estimated $1,213,892 in CDBG funds and $1,039,140 in HOME funds in the fiscal year beginning July 1, 2012. The City's Housing and Community Development Committee has made recommendations for the use of CDBG funds, which must be used in housing or community development programs in Asheville, and the Asheville Regional Housing Consortium has recommended uses for the HOME funds, which must be used for housing programs within the four-county Consortium area (Buncombe, Henderson, Madison, and Transylvania counties). A total of 31 programs are recommended for funding. Allocations are consistent with the proposed Strategic Housing & Community Plan for 2010-2015.

This proposed Action Plan reflects a 16% reduction in CDBG Entitlement funding from last year (on top of a 16% cut last year from the year before), and a 26% reduction in HOME Entitlement funding. The CDBG cuts were buffered somewhat by the receipt of Program Income, which is returned to the grant fund for reallocation. The CDBG grant this year is $26,601 less than last year. The HOME grant funds are $384,224 less than last year. This combined funding cut of $410,825 this year, following last year's cut of $388,187 continues to have repercussions internally and externally. The Community Development Division will maintain its staffing this year using reserved prior year funds but significant cuts are being felt across the board by all subrecipients and their community development projects.

HOME funds and CDBG funds will assist in creating or improving 190 housing units and helping an additional 229 households afford housing Consortium-wide. CDBG funds will also benefit more than 3,775 low-income City residents through homeless services, housing counseling, small business assistance, and other needed services. Our partner agencies will contribute approximately $18,513,000 of other funding to these programs, leveraging $8.21 for every $1 of HOME and CDBG funds.

A public hearing will be held at the Council meeting of April 24. Comments received at the meeting will be incorporated into the Plan, as will comments submitted in writing. The plan is due to be submitted to HUD by May 15.

This Annual Action Plan directly supports Council's Strategic Goals of:

- Affordable: This plan directly supports the City's affordable housing plan, uses innovative public-private partnerships to incentivize affordable housing development, and supports initiatives to end chronic homelessness emphasizing the Housing First model;
- Green and Sustainable: works with regional partners creating green buildings and energy conservation;
- Safe: Supports employment alternatives for youth at risk of gang exposure
- Job Growth and Community Development: Supports diversified job growth and small business development; promotes sustainable high-density infill growth; and attracts and retains quality employees.

Pros:

- Approval of the Action Plan paves the way for the receipts of over $2,200,000 of HUD funding to the City, which will be used to create affordable housing, create jobs, and improve public infrastructure.
- HUD funding will leverage $18,500,000 of additional funding for these projects.
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee and the Asheville Regional Housing Consortium.

Con:

- It is not possible to fund all the applications received, and most of those funded will receive less than the amount requested.

The Action Plan is fully funded from federal CDBG & HOME entitlement grants, unused funds from previous completed projects, and estimated program income. Staff costs to administer the program are also fully paid from federal sources. The funded programs will provide new construction and other economic activity in the City and region, creating and sustaining employment. New assisted housing units to be constructed in Asheville will add to the City's tax base.

Staff recommends approval of the resolution authorizing submission of the City's Consolidated Annual Action Plan for 2012-13 to the U. S. Dept. of Housing and Urban Development.

Staff recommends approval of the resolution authorizing submission of the City's Consolidated Annual Action Plan for 2012-13 to the U. S. Dept. of Housing and Urban Development.

Councilman Davis, Chair of the Housing & Community Development Committee, said it was very difficult for the Committee to make their recommendation in that all the requests were for good projects, but regrettably there was not enough money to fund everything.

Vice-Mayor Manheimer opened the public hearing at 5:40 p.m. and when no one spoke, she closed the public hearing at 5:40 p.m.

Vice-Mayor Manheimer said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Pelly moved for the adoption of Resolution No. 12-97. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34– PAGE 365**

**B. PUBLIC HEARING TO REZONE A PORTION OF PROPERTY LOCATED ON GERBER ROAD FROM URBAN VILLAGE DISTRICT/CONDITIONAL ZONING TO COMMERCIAL BUSINESS II DISTRICT**

**ORDINANCE NO. 4079 - ORDINANCE REZONING A PORTION OF PROPERTY LOCATED ON GERBER ROAD FROM URBAN VILLAGE DISTRICT/ CONDITIONAL ZONING TO COMMERCIAL BUSINESS II DISTRICT**

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone a portion of property located on Gerber Road from Urban Village District/Conditional Zoning to Commercial Business II District. This public hearing was advertised on April 13 and 20, 2012.

The current application is to rezone 4.25 acres of the original Gerber Urban Village property from Urban Village (UV) to Community Business Two (CB II). Last fall, the developed portion which includes the shopping center (about 7.22 acres) was rezoned from UV to CB II because the bank holding the note on the development foreclosed on the property and subsequently sold the different parcels to new owners. As was noted during that rezoning request, the Urban Village zone was created in 2001 and was applied to the large Gerber tract along with a master development plan. Only a portion of the site fronting along Hendersonville Road was actually built and a large section of the property (about 16 acres) has remained vacant. The downturn in the economy has been discussed as the main cause for the failure of this urban village project.

The parcel under consideration with this application is located on the south side of Gerber Road and is physically disconnected from the other portions of the site. The property cannot stand alone as an Urban Village because it does not meet the standard size for UV zoned areas (5 acres) and the buildable area is limited because a sizable portion of the lot that runs along Gerber Road is too narrow for development. The request to rezone the property to CB II is based on the size of the property and its limited buildable area with access from Gerber Road. . The intended scale for development in the CB II zone is appropriate for smaller parcels located along streets such as Gerber Road.

The proposed CB II zone is intended to provide areas for medium to high density commercial uses serving several residential neighborhoods. The district requires parking to be placed to the side or rear of the building which is a pedestrian oriented building standard to encourage pedestrian access and movement through the district. The location for CB II zoned areas is appropriately located on major thoroughfare streets to ensure adequate access. The list of allowed uses is extensive in anticipation of the wide range of commercial uses needed to serve as a community base. Individual buildings cannot exceed 45,000 square feet.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable because the larger Urban Village project is being redirected because the property has been divided up and sold to different buyers and because the CB II zone is appropriately scaled for smaller lots like the subject parcel.

The Planning and Zoning Commission reviewed the rezoning request at their meeting on April 4, 2012. The only comment was from the owner's agent. Because of a recent rezoning for the Gerber Village area and a current conditional zoning proposal for apartments for the other remaining portion of the parcel, this rezoning request was expected given the changes in the development direction for the entire Gerber Village property. The Planning and Zoning Commission voted 5-0 (with 2 absent) to recommend approval of the rezoning request.

Pros:

- The proposed rezoning is responsive to changing market conditions and economic realities.
- The proposed zoning will be compatible with the scale of the parcel and the surrounding area.
- The zoning change is expected to encourage investment on the parcel.

Con:

- Mixed-use projects are becoming unlikely for this site and the surrounding area.

The Planning & Zoning Commission recommended approval of the rezoning from UV to CB II and staff supports that recommendation.

Vice-Mayor Manheimer opened the public hearing at 5:44 p.m. and when no one spoke, she closed it at 5:44 p.m.

Vice-Mayor Manheimer said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hunt found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4079, subject to the following conditions: (1) This project will undergo review by the appropriate reviewing body prior to the issuance of any site development permits; (2) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; and (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 355**

**C. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY IDENTIFIED AS GIVENS PARK APARTMENTS, LOCATED ON GERBER ROAD, FROM URBAN VILLAGE DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 240 UNIT ELDERLY AFFORDABLE HOUSING COMPLEX, WITH A MODIFICATION REQUEST TO SECTION 7-11-3 (D) (3) (C) OF THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW FOR THE PLACEMENT OF REQUIRED STREET TREES**

**ORDINANCE NO. 4080 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY IDENTIFIED AS GIVENS PARK APARTMENTS, LOCATED ON GERBER ROAD, FROM URBAN VILLAGE DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 240 UNIT ELDERLY AFFORDABLE HOUSING COMPLEX**

Urban Planner Nate Pennington said that this is the consideration of an ordinance to conditionally zone property identified as Givens Park Apartments, located on Gerber Road, from Urban Village District to Highway Business District/Conditional Zoning for the development of a 240 unit elderly affordable housing complex, with a modification request to Section 7-11-3 (d) (3) (c) of the Unified Development Ordinance to allow for the placement of required street trees. This public hearing was advertised on April 13 and 20, 2012.

The applicant is requesting a Conditional Zoning for a portion of one (1) parcel zoned UV (Urban Village to HB-CZ (Highway Business – Conditional Zoning) for the development of a 240 unit senior housing development in accordance with Section 7-7-8 of the UDO.

The subject property consists of a portion of one parcel comprising 16.95 acres (split by Gerber Road) according to the submitted site plan and is located in the City of Asheville's corporate limits. The property is located along the north side of Gerber Road and behind the Gerber Village Shopping Center on Hendersonville Road. If approved, the subject property would be subdivided into two (2) separate parcels which would create separate tracts of land on each side of Gerber Road. The portion of property (4.25 acres) south of Gerber Road is being considered for a standard rezoning under a separate

application. The proposed project density is 18.6 units per acre. The maximum density permitted in the HB zoning district is 32 units per acre.

The following list provides a breakdown of the proposed development:

- 5 story construction
- 2 apartment buildings - 240 total units (120 units per building)
- 188 – one bedroom units
- 52 – two bedroom units
- Covered pavilion, leasing area, walking trails and outdoor seating areas
- Large surface parking fields
- Approximately 800 linear feet of retaining walls, ranging in height from 5 to 8 feet
- New public sidewalk and other basic site improvements

The subject property is vacant and was previously graded to support the Gerber Village development. With the exception of existing evergreen trees along Gerber Road, the site is mostly void of vegetation.

The apartment project is proposed to be built in two (2) phases with one (1) building and associated parking to be constructed in each phase. The pavilion/seating area and a trail system are proposed to be built as part of phase I.

Access to the site is proposed to be provided from three points of ingress/egress (one is ingress only) along Gerber Road.

According to the site plan, 318 parking spaces are provided. This amount of parking is well within the minimum/maximum parking threshold and is inclusive of required ADA spaces. Sixteen bicycle parking spaces are provided and this number is in compliance of the required 5% bicycle parking standard. Vehicle parking is dispersed throughout the site with the majority of parking located to the sides and rear of the proposed buildings.

Street trees will be required along the entire frontage of Gerber Road – with one modification being requested (see below). Building impact and retaining wall landscaping are dispersed throughout the site. Parking lot landscaping has been provided in applicable areas and tree save areas are located towards the perimeter of the site.

The open space requirement for this type of development is 15% of the total site size; a total of 2.45 acres for this site. The site plan illustrates that more than adequate open space has been reserved to meet this requirement.

Section 7-11-3(d)(3)c. of the UDO provides that street trees are required to be located no farther than 20 feet from the edge of pavement. Due to the location of existing underground and overhead utilities as well as a natural gas relief valve platform along Gerber Road, the applicant is requesting a modification to place required trees as far back as 35 feet from the edge of pavement. **The staff finds this request to be reasonable and supports the modification.**

A continuous sidewalk will be constructed along Gerber Road.

This proposal was approved with conditions by the Technical Review Committee on March 19, 2012.

This proposal, together with the modification request listed above, was approved unanimously with conditions by the Planning and Zoning Commission on April 4, 2012. One audience member suggested that the project include urban gardening options, and asked about transit options near the project.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The subject property is vacant and was previously graded years ago to support the Gerber Village development. The property is surrounded by high intensity commercial uses, vacant property, road infrastructure and an active rail line. The proposed infill development is clustered towards the center of the site and will be planted with required landscaping.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
As noted in Finding #2, the proposed development is compatible with surrounding uses and adjacent transportation corridors.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
As noted in Finding #2, the development is proposed in an area surrounded by other uses of similar intensity and served by adequate infrastructure. The proposed density is approximately one-half of the permitted residential density for the HB zoning district and is currently zoned to accommodate a much higher density.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
Elements of the proposal are aligned with the City's goals and objectives for "Affordable" and "Green and Sustainable," as noted in the Compliance with Comprehensive Plan and other Adopted Plans section (listed above).

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The property is located along Gerber Road in the vicinity of Sweeten Creek Road and Hendersonville Road. The nearest bus stop is approximately 100 feet north of the Gerber Village Shopping Center along Hendersonville Road and a pedestrian access point is proposed allowing for ingress/egress into the shopping center from the project. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The impact of the proposed use as revised (Givens Park Apartments) is expected to be substantially less than the density associated with the previously approved Urban Village residential use. As a result, the revised proposed use is not expected to cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request, with conditions noted, to be reasonable.

Pros:

- Higher density development furthers the goals and objectives of the comprehensive plan.
- The project meets City goals of providing green, affordable and infill development.

Cons:

- None noted.

Staff recommends approval of the project, including the modification request, as submitted by the applicant, with the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures (including wall packs) and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee if applicable; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) A minor subdivision application must be submitted and approved to create the lot to the south of Gerber Road that is being rezoned as part of a separate application.

Vice-Mayor Manheimer opened the public hearing at 5:48 p.m.

Mr. Tracy DeBruhl urged the developer to use local labor.

Mr. Matt Sprouse, SiteWorks Studio, explained how they are excited about the project and how it fits a need n the community.

Vice-Mayor Manheimer closed the public hearing at 5:51 p.m.

Council members spoke in support of the project, and even though they cannot mandate the developer to use local labor they would encourage it.

Vice-Mayor Manheimer said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4080 to conditionally zone property identified as Givens Park Apartments located on Gerber Road, from Urban Village District to Highway Business District/Conditional Zoning for the development of a 240 unit elderly affordable housing complex, with the modification to place required trees as far back as 35 feet from the edge of pavement, and subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures (including wall packs) and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee if applicable; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) A minor subdivision application must be submitted and

approved to create the lot to the south of Gerber Road that is being rezoned as part of a separate application. This motion was seconded by Councilman Bothwell and carried unanimously by a 7-0 vote.

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**D. PUBLIC HEARING TO REZONE A PORTION OF PROPERTY LOCATED AT 2 COMPTON DRIVE FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT**

**ORDINANCE NO. 4081 - ORDINANCE REZONING A PORTION OF PROPERTY LOCATED AT 2 COMPTON DRIVE FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT**

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone a portion of property located at 2 Compton Drive from RS-8 Residential Single Family High Density District to Institutional District. This public hearing was advertised on April 13 and 20, 2012.

Eliada Homes, Inc. has petitioned the City of Asheville to rezone a portion of their 203.41 acre property off of Compton Drive from RS8 to Institutional. The property abuts existing Eliada Homes property that is zoned institutional to the north and east. The subject property contains a single-family home and a portion of the drive for Erwin Hills Baptist Church accessing from New Leicester Highway.

The applicants are petitioning for this rezoning in order to perhaps develop the property as part of the Eliada Homes operation sometime in the future. The other 198 acres owned by Eliada Homes is zoned Institutional. Access to the property for institutional purposes would be via Compton Drive or off a shared drive with the church.

The property to be rezoned is 5.4 acres in size. It is relatively flat near Compton Drive but slopes sharply down to New Leicester Highway.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

This rezoning request was recommended for approval by a 5-0 vote at the Planning & Zoning Commission meeting on April 4, 2012. There were no speakers in the public hearing.

Pros:

- Addresses the goal found in the Asheville City Development Plan: 2025 that appropriate non-residential uses that serve residents should be permitted in appropriate locations.
- Allows for all property owned by an institutional operation to be zoned as Institutional.

Con:

- None noted

Staff finds this request to be reasonable and recommends approval of this rezoning petition.

Vice-Mayor Manheimer opened the public hearing at 5:56 p.m., and when no one spoke she closed the public hearing at 5:56 p.m.

Vice-Mayor Manheimer said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Pelly moved for the adoption of Ordinance No. 4081, and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City. This motion was seconded by Councilman Smith and carried unanimously.

**E. PUBLIC HEARING TO DEMONSTRATE SUPPORT AND SOLIDARITY BY ASHEVILLE WATER CUSTOMERS IN DEFENDING OWNERSHIP OF ITS WATER SYSTEM**

Vice-Mayor Manheimer said that they now have the report from the Legislative Research Commission studying this issue. They made the following three recommendations: (1) That the Metropolitan Sewerage District Act be amended (a) to allow Henderson County to have two board members on the MSD board (reducing the number of seats Asheville has from 3 to 1 and reduce the number of Buncombe County seats from 3 to 2); and (b) to allow MSD to run a water system; (2) That the Conservation Trust for North Carolina continue to work with the City of Asheville as the parties consider clarifying the 1996 Asheville Watershed Conservation Easement; and (3) Merging the Public Utility Water System with the Metropolitan Sewerage District of Buncombe County (MSD would take over the running of the water system entirely). The report says that they will not take any action until the next legislative session in January, 2013. Asheville has until January 2013 to enter into good faith negotiations with MSD to work out an agreement where Asheville would not run the water system and as long as we are engaged in that discussion, the legislature would not act to take our water system and merge it with MSD.

Mayor Bellamy had asked Vice-Mayor Manheimer to convey the message that now that we have the Legislative Report there is more opportunity for community discussion regarding this topic. Tonight will not be the last opportunity to speak about this issue at a public hearing.

Councilman Pelly said that since the Legislative Research Commission began their work earlier this year they held four public hearings of which three of those took place in Raleigh and the other took place at the WNC Ag Center near the Airport. There has not been any formal public hearing within the City of Asheville, despite the fact that the City of Asheville is the owner of the water system that serves Asheville and Buncombe residents. He had requested this public hearing so that Asheville residents who will be affected by the decisions made in Raleigh have an opportunity to voice their comments on this issue. This public hearing was advertised on April 13 and 20, 2012.

Vice-Mayor Manheimer opened the public hearing at 6:04 p.m.

The following individuals spoke in support of Asheville retaining ownership of the water system and urged Council to stand strong and fight for Asheville's continued ownership and operation of the City water system as they have been good stewards of this asset:

Peter Gentling, Asheville resident
Barry Summers
Heather Rayburn
Cheryl Wolf, Woodfin resident
Lois Hodgson
Teddy Jordan, President of Kenilworth Residents Association and Asheville resident
Mike Blankenship, Asheville resident
Christopher Chiaronmonte
Leni Sitnick, Asheville resident
Ellen Lyle, Asheville resident
Tom English, Asheville resident
Valerie Hoh, representing the Coalition of Asheville Neighborhoods
Steve Rasmussen
Milton Byrd
Tracy DeBruhl
Susan Fisher, Arden resident
Fred English, Asheville resident
Byron Greiner, Chairman of the Issues Committee for the Asheville Downtown Association

Clare Hanrahan

Vice-Mayor Manheimer closed the public hearing at 6:56 p.m.

Councilman Bothwell urged our residents to get involved.

Vice-Mayor Manheimer said that it is unknown what the water rates will be for County residents.

Councilman Smith hoped we can appeal to legislators in the General Assembly to recognize the excellence to which the City of Asheville has managed its water system, to recognize the consensus formed around maintaining Asheville's management of its water system and that those in Raleigh will see the folly of pursuing Rep. Moffitt's unilateral hope.

**Closed Session**

At 7:02 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: State of North Carolina; J. Jerome Jensen, et al (Biltmore Lake Annexation); cities of Rocky Mount, Goldsboro, Wilmington, Kinston and Lexington; and the City of Asheville. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 7:29 p.m., Councilman Smith moved to come out of closed session. This motion was seconded by Councilman Hunt and carried unanimously.

**A. ASHEVILLE-BUNCOMBE FOOD POLICY COUNCIL REPORT**

Councilman Smith presented Council with the results of a lot of hard work from our community and hoped that we can agree to continue moving forward for a food secure Buncombe County. He thanked Council for already choosing to allow markets in residential neighborhoods and to join in NC Cooperative Extension's 10% Campaign and for the historical support of the farmer's markets around Asheville. This is another opportunity that we have to alleviate poverty, reduce hunger in our community, improve public health, expand local commerce and make a more sustainable community.

The Future of food in Asheville & Buncombe County addressing poverty, public health, local commerce and sustainability through food security. The world health organization defines food security as existing "when all people at all times have access to sufficient, safe nutritious food to maintain a healthy and active life."

Regarding regional food security, (1) 14% of Buncombe County's 15 zip codes contain a food outlet of some sort yet 1 out of 6 people in WNC experience food insecurity; (2) 27% increase in county residents receiving food assistance in 2012; and (3) 50% of students within Buncombe County School system were enrolled in the free and reduced lunch program during 2009-10 year, up from 47% the previous year.

Problems associated with food insecurity include (1) Impaired mental and physical development in young children; (2) Food insecure children are 90% more likely to be in fair or poor health than food secure children; (3) A poorly prepared and uncompetitive work force; and (4) Family and personal instability, where uncertainness over "the next meal" creates a roadblock to dealing with other problems.

Causes of food insecurity include (1) "Food Deserts"-areas that do not have a convenient, affordable, healthy food source nearby, or full scale grocery store; (2) High prices for healthy food even

when it is available; (3) Inadequate cooking education and nutrition information; (4) Limited public awareness on the necessity and accessibility of affordable, healthy food; and (5) The availability of *Local sustainable food* to the population.

The mission of the Asheville-Buncombe Food Policy Council will identify and propose innovative solutions to improve local food systems, spurring local economic development and making food systems environmentally sustainable and socially just.

Community stakeholders include: Manna, Children First, Bountiful Cities, Asheville Housing Authority, Green Opportunities, Mountain Housing Opportunities, Advantage West, Mission Hospital, NC Health & Wellness Center, Healthy Buncombe, Office of Heath Shuler, Chamber of Commerce, ASAP, Asheville Independent Restaurant Association, Pioneering Healthy Communities, Rainbow in my Tummy, Slow Food Asheville, Council on Aging, Jewish Community Center, YWCA, ABCCM, WNCA, Transition Asheville, Interfaith Group, NC Cooperative Extension, AB-Tech, UNC Asheville, Warren Wilson, Asheville City School Foundation, Land of Sky, Just Economics, Youth for Empowered Solutions, Women's Wellbeing Fund, Homeward Bound, Mountain Valley Resource Conservation, French Broad Food Cooperative, and many individuals and businesses.

We have enormous opportunities regarding our community's commitment to ensuring a stable, healthy, and affordable food supply. Food security encompasses issues of poverty, public health, local commerce, and sustainability.

Local food is a simple, convenient, and powerful tool to achieve food security. Local food is reliably healthy and beneficial to the economy, and Local food increases access and affordability of fruits and vegetables.

Improving food security infrastructure (1) If the food and farm economy were expanded in WNC an additional $200 to $300 million would be spent on locally sourced food within the region; (2) expanding could increase employment opportunities; and (3) Local food expansion could address poverty, public health, commerce, and sustainability within any community or region.

Some cities that have passed local food policies include Baltimore, Philadelphia, Seattle, San Francisco, Bloomington, Cleveland, Milwaukee, Nashville, NYC, Chicago, Portland, Oakland, Minneapolis, Detroit, Providence, Kansas City, Austin, Santa Monica, Denver, Ann Arbor, and Santa Fe.

Potential policies (planning/land use) (1) Identify arable city-owned land and issue an RFP for organic, GMO-free food production, with a focus on Permaculture; (2) - Modify zoning rules to allow increased food production – greenhouses, gardens; (3) - Home-based cottage industries allowance for small-scale, value-added products; (4) UDO allowances for innovative methods of production (aquaculture, vertical farming, rooftop gardens, etc.); and (5) - Identify barriers to food production in residential neighborhoods and seek remedies.

Potential policies (parks & recreation) (1) Utilize parks to grow food and have community programming regarding health, nutrition, and gardening; (2) - Edible and medicinal landscaping in all public parks and rights of way; (3) - Partnership with gleaning organizations to distribute produce from edible trees, plants in parks and rights of way; and (4) - Liability waiver for volunteers helping to tend food production in parks. Make it easier for grassroots efforts to happen.

Potential policies (community development) (1) Utilize community centers for farmers' markets and CSA distribution; (2) Encourage food distribution in underserved communities by establishing market areas in each neighborhood, based on neighborhood preferences; (3) Seek incentives for food distributors in food deserts; (4) Allocate funds to non-profits involved in food security efforts; and (5) Encourage mobile markets for low-income communities, especially those in food deserts.

Potential policies (schools) (1) Identifying qualifying students who aren't enrolled in free and reduced lunch; (2) Prioritize local, fresh foods in cafeterias; (3) For qualifying students – identifying needs

outside of school for food, expand on "summer feeding sites"; and (4) Partner with Parks/Rec to provide feeding sites (would also increase participation with Parks/Rec initiatives). Other partners might include AB Tech, AIR DINER, GO, MANNA, Salvation Army, and Meals on Wheels.

Potential policies (economic development) (1) Seek grant opportunities for food production, processing, and distribution; (2) Recruit businesses focused on food processing and distribution in identified food deserts; (3) Incentivize food system development particularly in regard to processing; (4) Encourage home-based cottage industries for small-scale, value-added products; (5) Incent innovative methods of production (aquaculture, vertical farming, rooftop gardens, etc.); and (6) Provide incentives for local restaurants and food trucks to participate in the NC Cooperative Extension's 10% campaign. Ideas include the city providing advertising on public transit for participating businesses.

Potential policies (emergency) (1) Initiate a "Resilient Neighborhoods" program, i.e. assist neighbors in putting together knowledge and goods that would help them in the event of a shortage of food; and (2) Ensure fuel availability to food producers, processors, and distributors in the event of an extended fuel shortage.

Other potential policies (1) Replace contents of city vending machines with healthy food choices; (2) Implement CSA program for City Employees; (3) Utilize local, healthy foods in city commissary; (4) Investigate the potential for a citywide composting program alongside trash and recycling with a central point for community access to compost; and (5) Support community gardens and urban agriculture through resolutions.

Goals of Council include (1) Improve food sustainability within the region; (2) Coordinate production and distribution to increase efficiency; (3) Expand food education; (4) Improve land usage; and (5) Increase access of healthier food options.

Food systems cross governmental and geographic lines, and only by partnering with others can we take the necessary steps to create a food secure future. Asheville will work with all of our partners to ensure that food policies integrate sustainably with others' efforts, plans, and visions.

Councilman Hunt said this Food Policy Council effort is broader than the City of Asheville. There has been enough focusing in on general notions of what can be achieved community-wide and now we need to understand what policies might be realistic to achieve and what might be priorities on a city level. Therefore, he moved to direct staff to explore the proposals of the Food Policy Council to consider which components might become policy for the City of Asheville. This motion was seconded by Councilman Bothwell.

Councilman Bothwell took part in the first large meetings of the communications team and this dovetails nicely with what the Tree Commission is looking at, which is to make Asheville a Bee City and start planting trees that are good for bees. He suggested this Report go through the Tree Commission and the Sustainable Advisory Committee on Energy & the Environment (SACEE).

Councilman Davis felt that food security is very important and there is no need for hunger in our community. He liked Councilman Bothwell's suggestion of having SACEE review the report first. He felt the motion on the floor needed further refinement because some policy changes would require Unified Development Ordinance amendments, etc.

Councilman Hunt did not intend the motion to direct staff to move to any specific policy amendments at this stage. He was looking for simple exploration and refinement of what might fit policy-wise.

In response to Councilman Hunt, City Manager Jackson said that the Food Policy Council report is an excellent community initiative. There are a couple of ways to ask our organization to get behind it. One is to facilitate policy changes or implement programs and response to it affirmatively like we have with other partnerships. We can meet people half-way very effectively. Council's strategic goals for the

year suggest that we would, in fact, do that. We have a City adopted Greenway Plan, a Sidewalk Plan, a Sustainability Plan, and 14-15 other master plans that have gone through an extensive process. Those are City-adopted master plans, not a community plan. If Council refers this to SACEE, we will have to define our role. We are already responding with freeing up market regulations, etc., and as initiatives come forward, we can respond to those and move those to priority status, given Council direction. There are two roles and depending upon Council's direction now, or the direction that may come out if Council refers this to SACEE, may require additional discussion and maybe resource allocations.

Councilman Smith said that he broke the presentation down into the different departments so each department could look at some of the pieces. He said some of this movement is already going on and if we can allow time for staff to look at these things and see how it fits into the strategic goals we have, we might be able to see the "low hanging fruit" and what things we are going to have to open up a longer, more deliberative process to approach.

Councilman Hunt suggested that SACEE take a leadership role and provide a report to Council in nine months and over that time engage with staff and explore what sort of things can come out from a refinement standpoint. Councilman Smith confirmed that during that time, departments will look at those things and deliver their cursory findings to SACEE and then have SACEE re-package and bring it back to Council.

Councilman Hunt withdrew his motion.

It was the consensus of Council to have SACEE look at the Food Policy Council's sustainability initiatives to see how they fit into the Sustainability Plan we have and for SACEE to provide a report back to Council in nine months. City Manager Jackson said that SACEE may also want to recommend to Council the significant partnerships as well. He would ask that SACEE not only look at what we can do for this program, but what the larger community effort will be and compliment it.

City Manager Jackson suggested a joint worksession between the Food Policy Council and SACEE to begin talking about how they can collaborate on the larger program and then bring it down to the City role and participation.

## VI. NEW BUSINESS:

### A. REVIEW OF CURRENT SKATEBOARDING ORDINANCE

Assistant City Manager Jeff Richardson said that this is a review of the current skateboard ordinance to either: (1) Strengthen the Police Department's ability to enforce the no-skateboarding provision in the city's business district by amending the current ordinance to disallow riding skateboards in cross-walks, and installing informational signage accordingly, or (2) Permit skateboarding in the Central Business District's (CBD) roadways as a "green" mode of transportation.

The City's current skateboard ordinance prohibits skateboarding upon any roadway, except while crossing a street on a crosswalk. This prohibition applies throughout the City, regardless of the type of district the roadway is located. Additionally, skateboarding is prohibited on any sidewalk in a business district. This particular prohibition applies in business districts only; skateboarding is allowed on sidewalks in all other districts.

Currently, the Asheville Police Department enforces the skateboard ordinance by either a citation or verbal warning; an average of 20-30 citations and countless verbal warnings are issued each year to skateboarders in the Central Business District. Because these citations enter the judicial system, a District Court Judge requested that informational signage be placed in the CBD informing the public of no skateboarding in the district. In addition, the judge also asked that the ordinance be modified to disallow skateboarding in cross-walks, in an effort to clarify the restriction and provide consistency throughout downtown.

On a separate but parallel track, skateboard advocates previously approached the Public Safety Committee in 2010 and asked the City to evaluate skateboarding as a means of green transportation in the Central Business District on downtown streets. At that time, the Police Department expressed concerns with traffic safety dangers to the skateboard operator, pedestrians, and motor vehicles.

Skateboarding advocates point to skateboarding as an alternative form of transportation, and if allowed, providing for an additional multi-modal option for citizens to get to and from work across the CBD, by allowing more expeditious movement throughout the downtown in general, similar to bicyclists.

Benchmark North Carolina Cities:

The North Carolina General Statutes do not address skateboards. This issue is usually governed by local ordinances. Several regional cities were identified to currently prohibit skateboarding in their core downtown areas, to include:

- Chapel Hill: No skateboarding on core streets downtown.
- Charlotte: No skateboarding on any roadway except to cross a street.
- Durham: No skateboarding on any roadway, except while crossing the street at a crosswalk and except upon streets set aside as play streets.
- Fayetteville: No skateboarding on any roadway, except while crossing a street at a crosswalk/intersection.
- Greenville S.C. No skateboarding in the Central Business District or any road designed for vehicular traffic posted more than 30 mph.
- Greensboro: No skateboarding on roadways throughout the city and any sidewalk in the CBD.
- Raleigh: No skateboarding on any roadway, except for crossing a street at a crosswalk, or upon streets as play or sledding streets.
- Wilmington: No skateboarding on streets, sidewalks, public park, or public vehicular area located in the CBD or Riverwalk.

Nationally, city staff identified several cities, to include Portland, Oregon, which allow skateboarding in certain areas of downtown. Portland, in contrast to Asheville, has significant bike lane infrastructure connectivity throughout its downtown, connecting back to greenways reaching to most areas of the city. Lastly, Portland, which is commonly referred to as the skateboarding capital of the U.S., also boasts five skateboard parks, and roadway signage and connectivity framing out a skatepark system. Additional cities, to include Seattle and San Antonio have embraced the idea of multi-skatepark systems.

This action aligns with City Council's Strategic Operating Plan in the area of Asheville as a Safe City/Asheville as a multi-modal city.

City Council has emphasized integration and implementation of a multi-modal transportation plan, to include adding it as a sixth Area of Focus in the current Strategic Operating Plan. Therefore, it is understandable as to the advocacy for additional green options through the downtown.

Similarly, the Strategic Plan also identifies "Safe", as a high priority, namely, Asheville as one of the safest cities when compared to similar sized cities. The Police and Transportation Department's operational efforts include continual analysis of Asheville's most dangerous intersections. This includes traffic crash data analysis, including intersection design, signalization (or lack thereof), roadway, signage, and marking design. These traffic safety efforts serve to better direct staff resources regarding dedicated patrol as a deterrent. In the spirit of those efforts, the Police Department cannot in good faith endorse skateboarding as a safe means of multi-modal transportation on streets in the Central Business District.

(1) If City Council permits skateboarding in the Central Business District's (CBD) roadways as a "green" mode of transportation, staff analysis offers the following:

Pro: Expanded multi-modal opportunities for citizens throughout downtown.

Con: Traffic safety dangers to the skateboard operator, pedestrians, and motor vehicles.

Fiscal Impact: Transportation staff recommends informational signage on key city streets to denote skateboarding as an approved usage on CBD streets. Costs are estimated at $500.

(2) If City Council strengthens the Police Department's ability to enforce the no-skateboarding provision in the city's business district by amending the current ordinance to disallow riding skateboards in cross-walks, and installing informational signage accordingly, staff analysis offers the following:

Pros:

- Removes uncertainty of whether skateboarding is a permitted activity downtown;
- Assists the prosecutorial process in the judicial court system;
- Creates a safer environment for pedestrians, the motoring public, and skateboarders.

Con: Restricts a mode of transportation in the Business Districts.

Fiscal Impact: The estimated cost to fabricate and install the appropriate signs in the central business district is about $500 and is currently budgeted in the operating budget for the Transportation Department.

Skateboarding is prohibited in downtowns across the country. City staff recognizes the competing interests as outlined above with expansion of multi-modal options, while assuring Asheville remains a benchmark for community safety. Asheville's high downtown density makes this consideration especially concerning, thus, City staff recommends support for no skateboarding in the Central Business District.

Assistant City Attorney Kelly Whitlock briefly said that the current ordinance prohibits skateboarding upon any roadway, except when crossing a crosswalk. That prohibition applies across the board to all roadways – doesn't matter what district. Additionally, skateboarding is also prohibited on any sidewalk in the Central Business District. Skateboarding is allowed on greenways and in parks.

Councilman Smith felt there are inequities in our policies regarding transportation. We have a multi-modal transportation goal for our city and we need to allow people to use alternative modes of transportation. He said there is no data presented to suggest that skateboarding as a mode of transportation was any more dangerous than bicycling or segwaying. There are models for skateboarding as transportation, such as the Four Wheels Down model, which is if you are rolling on all four wheels, you are trying to get to one place to another. If you are using it to jump, do tricks or go on two wheel, then you are a recreational skateboarder and it becomes unsafe. Safe use of your vehicle, regardless of what it is, needs to be promoted. He didn't think we should have one mode of transportation signaled out for a prohibition.

Councilman Smith moved to direct staff to prepare an ordinance to allow the use of skateboards for transportation, using the Four Wheels Down model on roadways, crosswalks and bike lanes (where available), not sidewalks, within the Central Business District and bring it back for Council consideration. This motion was seconded by Councilman Pelly.

Councilman Bothwell agreed about the green transportation effort and that other cities have been successful with the Four Wheels Down model. However, one significant difference he has noticed is where they do have that policy, the cities tend to be flatter than Asheville. The danger is more prevalent when you're on a hill vs. a flat area.

Councilman Davis' concern is that in the Central Business District (CBD) there are a lot of pedestrians. The entire CBD is a 50 block area and easily walkable. He is not trying to single out a

sector of society, but there are certain things that make sense and to him, skateboarding in the CBD is not really a means of transportation as much as it is for recreation.

Councilman Pelly was not entirely convinced and would like to hear proponents talk about the safety concerns raised. If we do allow this to move forward, he asked for consideration of requiring helmets, lighting at night, etc.

Councilman Hunt said some concerns expressed were out of control skateboarding, jumping and recreational-type uses. Some felt that lifting the ban might invite these recreational aspects back in our downtown area.

When Councilman Hunt asked about enforcement challenges, Mr. Richardson said that if Council directs staff to move forward to allow skateboarding on roadways in the CDB with the Four Wheels Down model, staff would have to spend time talking with other cities who have that in place to talk about their enforcement mechanisms. Presently there are 20-30 citations a year with a considerable amount of verbal warnings. He would suppose it would be a challenge for the Police Department to enforce that because there is a significant amount of subjectivity looking through a very densely populated CDB to determine if this is a means of transportation, how fast is the person going, is the person a danger to himself or the people around him, etc.

In response to Vice-Mayor Manheimer, Mr. Richardson said that he has found no other city in North Carolina that allows skateboarders in their downtown. Portland, Oregon, (who has the reputation of the skateboarding capital of the United States with significant infrastructure in their CBD) and New Haven, Michigan, have ordinances that allow skateboarding in the CBD. He has not been able to identify a good benchmark city comparable to Asheville, but given direction by Council, they will continue to look.

The following individuals spoke in support of allowing the use of skateboards for transportation, using the Four Wheels Down model on roadways and crosswalks, not sidewalks, within the Central Business District, as they basically wanted the same rights as bicycles:

Owner of Push Skate Shop in downtown Asheville (presented Council with a list of downtown businesses that support skateboarding as transportation)
Chad McRory
A gentleman
Clyde Singleton
Mike Bellamy
Thomas Coffey
Carol O'Shiver
Thomas Lance

Ms. Michelle Arack spoke in favor of keeping the ban for pedestrian safety; however, she felt. skateboarding in bike lanes would be acceptable.

When Councilman Bothwell asked if confiscation of the boards when given a ticket is City policy, Ms. Whitlock said that it is not part of our ordinance.

City Attorney Oast said that some clarification on the ordinance may be necessary, such as, operators shall wear helmets meeting American National Standards Institute standards, no skateboarding after sunset or before sunrise, skateboarders shall obey all traffic laws and shall keep to the right of the lane of travel using bike lanes where available, all skateboards shall have at least four wheels and all wheels shall be on the ground at all times. Vice-Mayor Manheimer said that if the motion passes, staff will craft the ordinance with suggested appropriate components for Council to consider.

Vice-Mayor Manheimer wanted to see some information about cities that are similar to Asheville that do allow skateboarding in their downtown and how they handled it. She would also like to hear what the downtown businesses have to say about skateboarding on the roadways downtown. She felt the

people in the audience are very well intentioned, but she recalled a downtown Asheville where we were not enforcing our ordinance and allowing skateboarding and it basically consisted of 20 guys in front of the Biltmore Building doing tricks and making it a very unwelcoming environment for those who were not on a skateboard. It was very intimidating and difficult to move around. It was not a community oriented activity that felt welcoming for older folks, younger children and families. She was not interested in creating that environment again in downtown.

In response to Councilman Bothwell, City Attorney Oast said that roller skating is not allowed on any sidewalk in a business district. He noted that our ordinance is from the 1960's.

When Councilman Pelly asked if Councilman Smith would be interested in a friendly amendment to his motion to also have staff draft an ordinance allowing skateboarding on roadways on all City streets, Councilman Smith asked if that could be a separate motion, given the speed limits downtown vs. the speed limit on Hendersonville Road.

At Councilman Pelly's request, it was the consensus of the majority of Council to have staff examine how other cities have dealt with allowing skateboarding on roadways on all City streets.

The motion made by Councilman Smith and seconded by Councilman Pelly carried on a 5-1 vote, with Councilman Davis voting "no."

**B. RESOLUTION NO. 12-98 - RESOLUTION ESTABLISHING THE NEIGHBORHOOD ADVISORY COMMITTEE**

Councilman Pelly said that nearly everyone in the Chamber is a resident of Asheville and, as proud as we are of that, we also identify ourselves by the area of town in which we live. Be it Malvern Hills, Beverly Hills or Richmond Hill we identify with the neighborhood we call home. There is a reason for this, neighborhoods are the place we inhabit on a daily basis and for which most residents feel a special bond of community.

Each area of town is unique and has its own identify and oftentimes its own set of challenges. For this reason, he maintains the City has a self-interest in promoting cohesion and community participation at the neighborhood level. By creation of the Neighborhood Advisory Committee, City Council is indicating they acknowledge a fundamental geographic subset of the city by which most residents already self-identify – their own neighborhood. He believes the collective interest of our community will be served by promoting cohesion and participation at the neighborhood level and that creation of this committee will help foster that process.

As proposed, the Neighborhood Advisory Committee is charged with developing plans to strengthen neighborhood identity and resilience, and to facilitate communication and cooperation between Asheville's neighborhoods and City offices. The Committee will also develop benchmarks and standards by which progress towards implementing these plans can be measured.

As an advisory Committee, these plans will take the form of recommendations to City Council for review and formal action. Among the questions the Committee will explore include (1) How are other cities meeting the needs of their neighborhoods?; (2) What are the best practices and model policies for defining and delivering neighborhood services?; (3) What is the best way to align the City's Strategic Operating Plan with neighborhood considerations?; (4) What training programs are needed and what are available for existing and potential neighborhood leaders?; (5) How might the City become a national model in providing neighborhood services?; (6) How might the City incentivize neighborhoods to become organized?; and (7) In what ways can this advisory committee support the goals of City government?

The idea of a Neighborhood Advisory Committee is not new. Many cities in North Carolina and elsewhere already have some variation of this idea. He believes the time is right for our City to begin to explore ways to refine and strengthen the relationship between City government and neighborhoods.

The resolution calls for a nine-member Committee with five members from each major geographic area of the City, as defined by postal zip codes, 28801 (central), 28803 (south), 28804 (north), 28805 (east) and 28806 (west). The remaining four seats will be at-large appointments and all seats shall reflect the socio-economic diversity of Asheville.

His personal hope is to attract candidates for appointment with a demonstrated interest in working to strengthen neighborhood identity and citizen participation.

Although he believes this is an important process to undertake, he does not know what outcomes the Committee may recommend. What he believes; however, is that our City will benefit from undertaking this discussion. There are many good ideas, some which don't cost anything, that can help us become an even more neighborhood-oriented community.

Examples of ideas that the Committee might explore include (1) working with the Asheville Police Department and Chief Anderson to increase Neighborhood Watch participation and community policing; (2) formalizing a process for sharing local success stories between neighborhoods such as Montford's community newsletter or Kenilworth Community Watch program; (3) formally recognizing successful neighborhood leaders to highlight their accomplishments; (4) creating a model for developing and executing individual neighborhood plans that identify challenges and opportunities; and (5) seeing how food security can it into the "Resilient Neighborhoods" program.

Councilman Hunt felt that neighborhoods are the fabric of our community and a great source of strength. He hoped for the committee to achieve is how can neighborhoods serve to reinforce community-wide goals.

Mr. Steve Rasmussen supported establishing this Committee.

Vice-Mayor Manheimer said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 12-98. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 366**

**C. RESOLUTION NO. 12-99 - RESOLUTION AUTHORIZING THE CITY MANAGER TO INSTITUTE A THREE-WEEK FARE-FREE PROMOTION BEGINNING MAY 21 – JUNE 8, 2102**

Director of Transportation Ken Putnam said that this is the consideration of a resolution authorizing the City Manager to institute a three week fare-free promotion as part of the implementation of the first phase of the Transit Master Plan (TMP), which is scheduled to begin on May 21, 2012, and end on June 8, 2012.

The first phase of the Transit Master Plan (TMP) implementation was approved by Council on April 27, 2010. The specific recommendations included a fare increase, operational changes, and a marketing strategy. The fare increase was effective on July 1, 2010, and affected monthly and annual passes and ticket books; the cash fare remained the same. The rest of the recommendations will be implemented on May 21, 2012, and include:

- Operational Changes

In order to provide better service to our customers, 30-minute frequency will be implemented along the main corridors in the densest sections of the specific corridor. In order to accomplish this task, existing routes will be staggered along five corridors; namely, Patton Avenue – Routes 15 and 16,

Haywood Road – Routes 1 and 9, Biltmore Avenue – Routes 4 and 8, Tunnel Road – Routes 13 and 26, and Merrimon Ave. – Route 2.

System wide on-time performance changes are also included. Currently, one of the biggest challenges the transit system faces is keeping the buses on-time mainly due to route deviations and Dial-A-Ride service. In order to accomplish this task, existing route deviations will be reduced or eliminated and Dial-A-Ride service will be stopped. The subject action addresses driver's concerns with the current route schedules and the pressure they constantly receive from riders to be on-time.

The operational changes are incorporating two cross-town routes, one serving the southeast-southwest and the other one serving the northeast-northwest. Also, new areas will be served, New Leicester Highway to Land of Sky Regional Council and ABCCM on Tunnel Rd.

The evening routes will be consolidated with the day routes, eliminating the existing gap; the evening routes will end earlier as recommended in the TMP, based on ridership. The routing will be the same for day and evening trips making navigation of the system smoother for the rider.

In addition, the bus stop system has been streamlined, new bus stops have been installed, some existing bus stops have been removed, and other stops have been relocated.

These system wide changes are being achieved with no fiscal impacts in the current operating budget.

- Marketing

One of the most important elements to enhance the Asheville Redefines Transit System, as expressed in the Transit Master Plan, was to develop a marketing strategy that focuses on the creation of a new image for the system and promotion of route changes including system "branding" (logo), color schemes for the buses, signs, and new maps. The City hired Urban Trans Consultants Inc., from Atlanta to support and assist in the implementation of the marketing strategy. Urban Trans has developed all the material that will be used during this implementation, including, a new brand, new image for the signs, new route numbers, maps, and miscellaneous material. Some of these changes have already been implemented, such as the Asheville Redefines Transit logo (ART) and the art work on the five new hybrid diesel-electric buses.

Staff is working on polishing the final details to roll out the new routes. As part of the communications plan six public meetings will be held to inform the public about the changes and to provide assistance navigating the system. The meetings will be held in Downtown Asheville and in five different neighborhoods: North, East, West, South, and the River District. Agencies and organizations have been contacted to inform their constituents about the changes. Also there will be mobile information stations at the Asheville Redefining Transit (ART) Station and on the buses and additional phone lines will be available to assist customers during implementation. All of these will be complemented with information to the media, press releases, and social media.

As part of the marketing strategy the Transit Commission has requested a fare free promotion from May 21, 2012, to June 8, 2012. This request was voted 6-1 during their March 6, 2012, meeting. The fare free is intended to ease the transition to the new routes for existing riders and to attract new riders to the system that would like to give it a try.

The city has implemented fare free promotions in the past. In 2007 there was a three-month fare free promotion that increased ridership 23%. In 2011 there was a one-week fare free promotion to promote the Strive Not To Drive campaign that increased ridership by 3%. On both occasions the ridership increases have been maintained after the promotion ended.

The increase in ridership not only reduces the cost/hour to operate the system but also increases the Federal Transit Administration Section 5307 apportionment that helps pay for transit operations (passenger miles vs. operating costs count for 9.2% of the apportionment).

The cost of the fare free promotion is estimated to be about $42,000. Staff has analyzed revenues and expenses and concluded that the promotion would not have a negative impact on the overall current operating budget and the promotion can be absorbed in it.

The Transit Commission supports the subject action. In addition, the Finance Committee approved this action at their April 3, 2012, meeting.

This action complies with the current City Council's Strategic Operating Plan for Fiscal Year 2011-12 within the fiscal responsibility and multimodal transportation focus areas by operating the City of Asheville to the highest levels of fiscal responsibility; and helping establishing a multimodal transportation plan by making needed transit system improvements.

Pros:

- The fare free promotion will ease the transition to route changes for existing riders and will attract new riders.
- The fare free has been an effective marketing tool to increase ridership in the past.
- If there is an increase in ridership this will reflect in the system's performance measures, reducing the cost/hour of operating the system and potentially increasing the federal allocation.

Con:

- The cost of the project is about $42,000.

The fiscal impact of this project is estimated to be approximately $42,000 in lost revenue. Based on current year revenue to date, staff anticipates that budget estimates will still be met even with the $42,000 in revenue that will not be received during the fare-free promotion.

City staff recommends that City Council authorize the City Manager to institute a three week fare-free promotion as part of the implementation of the first phase of the Transit Master Plan (TMP), which is scheduled to begin on May 21, 2012.

When Vice-Mayor Manheimer asked for public comments, none were received.

Vice-Mayor Manheimer said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 12-99. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 368**

**D. RESOLUTION NO. 12-100 - RESOLUTION AMENDING THE 2008-09 ANNUAL ACTION PLAN TO REALLOCATE CDBG-R FUNDS FROM LOUISIANA STREET SIDEWALK TO EMERGENCY REPAIR**

Community Development Director Jeff Staudinger said that this is the consideration of a resolution amending the 2008-09 Annual Action Plan to reallocate CDBG-R funds from Louisiana Street Sidewalk to Emergency Repair.

In June of 2009, the City submitted to HUD its Amended 2008-2009 Action Plan for the use of $332,942 received in an ARRA-funded CDBG-R grant. Of that award, $123,648 was allocated to the City of Asheville to contract for sidewalk construction on North Louisiana Street, serving the Emma neighborhood and connecting that neighborhood to Patton Avenue. $63,914.59 was used for that

purpose, leaving an unexpended grant budget of $59,733.41. The City fully expected to be able to use these funds for additional sidewalk construction there. However, competing Public Works construction priorities and an extended timeframe in negotiating rights-of-way have resulted in delay in getting additional construction underway.

CDBG-R funds must be fully expended and drawn down from HUD prior to September 30, 2012. Public Works and Community Development staff have had extensive discussion about the project and the CDBG-R timeframe. Although Public Works staff feels that the intended construction could be completed within that timeframe, two factors concern staff:

1. The potential loss of funds due to additional unanticipated delays;
2. The potential loss of funds due, ironically, to cost savings for the intended construction, due to a favorable construction cost environment.

In light of these considerations, Public Works staff has reviewed the project funding available, and state that the intended project will be completed with already budgeted City funds for sidewalks- sufficient funds are available in both materials and contracted services budgets. Both CD and Public Works staff concur that the allocation of these funds for another grant eligible purpose is in the best interest of the City.

Because of the impending deadline to use the funds in a manner which meets both CDBG and Recovery Act regulations, limited options are available. Of existing CDBG-R grantees, the Emergency Repair program, operated by Mountain Housing Opportunities, has significant unmet demand, and would be able to meet the completion timelines outlined above. The Emergency Repair program provides one of two services to very-low income, special needs households: a "Tier 1" repair that provides up to $5,000 to address one issue that threatens the health or safety of the household; and a "Tier 2" repair which provides up to $15,000 to address more complicated issues threatening the health or safety of the household. In either case, the repair prevents homelessness. The HCD Committee reviewed this, and agrees that reallocating funds for the MHO Emergency Repair program is advisable.

This proposed reallocation of CDBG-R funds directly supports Council's Strategic Goal of Affordable by funding an initiative to prevent homelessness.

Pros:

- Approval of the reallocation ensures that $59,733 of HUD CDBG-R funds will be used to assist very-low income special needs households make emergency repairs that address critical health and safety issues in their homes;
- The City has sufficient other funds to construct the planned sidewalk on N. Louisiana Street.

Con:

- None.

The proposed reallocation is fully funded from the federal CDBG-R grant. Other funds budgeted for sidewalk construction are sufficient to construct the sidewalk for which the grant had originally been programmed.

Staff recommends approval of the resolution authorizing the amendment to the 2008-2009 Annual Action Plan to reallocate $59,733.41 of CDBG-R funds from the City of Asheville North Louisiana Street sidewalk project to the Mountain Housing Opportunities Emergency Repair program.

When Vice-Mayor Manheimer asked for public comments, none were received.

Vice-Mayor Manheimer said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 12-100. This motion was seconded by Councilman Smith and carried unanimously.

## E. ORDINANCE NO. 4082 – ORDINANCE AMENDING THE FEES & CHARGES MANUAL FOR ELECTRONIC GAMING OPERATIONS

Director of Finance & Management Services Lauren Bradley said that this is the consideration of an ordinance amendment to the *Fees & Charges Manual* for Electronic Gaming Operations.

In May 2010, the City of Asheville adopted zoning standards regulating Electronic Gaming Operations (EGOs). Adopted on the same night was an amendment to the *Fees & Charges Manual* establishing a privilege license fee for these same operations. The fee was established by considering the potential revenue for the operations and was benchmarked against other municipalities in the area. The benchmarking revealed that Asheville's fee was neither the highest or the lowest. The fee adopted was (Ord. No. 3869):

*Base fee $1,000.00 per year; plus $2,500.00 per machine added to the base fee.*

Shortly after standards were established and fees collected for over 50 businesses, the NC General Assembly adopted a new law that banned all EGO's. As most businesses were informed of the likelihood of the ban, there was little resistance to the ban. Permit issuance and fee collection ceased, and police enforcement followed. In order to accommodate a few large privilege license fees, a subsequent fee amendment allowed for pro-rated fees which enabled a few modest refunds. This fee was (Ord. No. 3910):

** Base fee $48.67 per month (or part of a month) per establishment; and 208.33per month (or part of a month) per machine.*

**This amendment appears to include a typographical error that swapped the respective fees. As originally adopted, the fee was written as "Base fee $208.33 per month (or part of a month) per establishment; and 48.67per month (or part of a month) per machine". This was in error.*

Now that the legality of EGOs seems to be somewhat settled, the option for pro-rated fees are not necessary. Additionally, pro-rating fees for privilege licenses is uncommon and somewhat problematic both from both a processing and a collection standpoint. This amendment proposes to supersede the current fee and re-establish the once-year fee to be paid in full at any point through-out the year for a new business, and renewed annually at the beginning of each new fiscal year. If adopted, this fee would not allow for pro-rated fees for a partial year, nor would it allow for any refunds should the state pursue new action that would prohibit these operations.

Additionally, staff is proposing an increase in the base fee from $1000 to $1500 per establishment. Additional research shows that this increase is consistent with fees from other municipalities.

This fee amendment has not been reviewed by other public bodies – although it is an amendment to an existing fee. Additionally, the judicial decision has left little time to establish a fee prior to the new fiscal year.

This proposal does not directly relate to the goals outlined in the Strategic Operating Plan but is most closely aligned with the goal for "job growth and community development" by balancing business needs with community needs and concerns.

Pros:

- Works in concert with regulating standards that help control the unchecked proliferation of these businesses, and potential nuisance impacts associated the businesses.
- Provides unbudgeted revenue for the City of Asheville.

Cons:

- None noted.

Revenue from these fees in 2010 was approximately $192,000. City enforcement staff has noted approximately the same number of establishments currently in operation as those that were noted in 2010. Therefore, staff has included the additional revenue from these fees in the Proposed FY 2012-13 Budget that is being presented to Council on April 24.

Ms. Bradley said that since we had the fee in place, there were 72 businesses with these machines and approximately 226 stations. If Council approves the privilege license fee, there may be some of these operations that close and chose not to function just because it's not financially feasible for them to do it. But we expect that there will be at least as many as we saw before paying the privilege license fee. We charge a privilege license fee for this type of operation because it helps provide information about who is conducting this type of business and where so that we can ensure compliance with our zoning guidelines, and it also helps provide a fee mechanism for these businesses to participate in the demand on City services in a way that is more equitable. If people don't pay the fee, they can't get their zoning permit and there is a civil violation of $100 per day. More significantly, our ordinance for privilege licenses says that there is a criminal penalty (a misdemeanor) if you don't pay your privilege license fee and that the City can seek an injunction; however, we normally go through a collection process first.

City staff recommends the adoption of the ordinance and new fee as proposed.

Mr. Mike Grace, attorney from Winston-Salem representing a firm out of Oklahoma who is one out of the two main plaintiffs in the lawsuit mentioned, said his client licenses over 150 internet café locations in more than 60 counties across North Carolina. He was not concerned about the propose change to the fee schedule, but to open dialogue concerning the fee schedule as a whole. Based on his experience, the City will not have many people applying for licenses at the current fee schedule of $2,500 per machine. There are only three other cities that have a similar schedule and they are in negotiations with them to reconsider their schedule. He feels this fee will drive legitimate businesses out of the City into the County and you will have to deal with the people running illegally. He will contact City Attorney Oast and some later time for reconsideration of the entire schedule.

In response to Councilman Davis, Ms. Bradley said that initially, before the ruling change, we had 45-50 establishments licensed with a revenue of approximately $190,000.

Vice-Mayor Manheimer said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Smith moved for the adoption of Ordinance No. 4082. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 364**

**F. PRESENTATION OF THE CITY MANAGER'S RECOMMENDED BUDGET**

Director of Finance & Management Services Lauren Bradley outlined the following budget goals: (1) Maintains the current tax rate to support affordability goals for Asheville citizens and businesses; (2) Invests in our workforce; (3) Aligns resources with strategic planning and core services; and (4) Builds a budget based on sound financial management practices to ensure continued stability as the economy recovers.

General Fund revenues consist of (1) No property tax increase; (2) Revenues projected to increase by 2.9% (a) 1% growth projected in property tax revenue; (b) 5% growth projected in sales tax revenue; (c) 1.6% growth projected in Intergovernmental revenue; (d) 11.7% growth projected in licenses

& permits; and (e) Other sources remain flat; and (2) No fund balance appropriation. Revenue enhancement is restoration of licenses for electronic gaming machines: $200,000.

She then showed a chart of sales tax revenue and other taxes.

General Fund expenditures consist of (1) 1% cost of living adjustment for city employees; (2) General Fund contribution to health care to remain unchanged; (3) Technical adjustments made for: (a) Increases in the cost of fuel; and (b) Fire department overtime staffing costs (addition of 9 firefighters); and (4) Increased Housing Trust Fund contribution by $200,000 for $500,000 total.

Water Fund - (1) No water rate increases to any class of customer; (2) Revenues have increased partly due to Automatic Meter Reading initiative; and (3) Contribution to capital is increasing by $1.3 million as a result.

Stormwater Fund - Stormwater fees remain unchanged (a) $290,000 appropriated from stormwater fund balance for Michigan Avenue capital project.

Transit Fund - Loss of $160,000 in State funding; partially off-set by increase in Transit revenue as a result of increased ridership (a) Increases Parking Fund transfer by $90,000; and (b) An additional $30,000 from the Parking Fund will fund holiday bus service on main routes during peak hours.

Parking Fund - Proposed budget includes: (a) Increasing transfer to the Transit Fund; (b) Full year of operation of Biltmore Avenue Parking Garage; (c) Transfer of $40,000 to capital for meter replacements; and (d) Transfer of $120,000 to General Fund for first phase of form based planning policy and increase to EDC allocation.

Civic Center Fund – (1) General Fund operating transfer to the Civic Center Fund shows an increase of $303,000 for debt service associated with renovations; capital decreases by same amount making overall transfer unchanged; and (2) 2 FTEs added to cover additional points of sale and building maintenance; expenses covered by increases in revenue.

Golf Fund – (1) Includes a revenue adjustment and $140,000 transfer from General Fund to balance the budget; and (2) Responses to the Request for Proposals (RFP) coming forward to City Council in the first quarter of FY 2012-2013.

Internal Service Fund - Proposed FY 2012-13 budget includes the first year contribution ($200,000) of a step-up plan to meet the City's annual required contribution for Other Post Employment Benefits (OPEB) to the State Treasurer's OPEB Investment Fund.

She then reviewed pie charts of the FY 2012-13 CIP Revenues and CIP Expenditures.

Capital Improvement outcomes include (1) Street Resurfacing: $1.3 million, 5.83 miles resurfaced; (2) 1 mile of sidewalk maintenance, 1.35 miles new sidewalk; (3) Design work for Town Branch greenway to make it shovel ready; (4) Northside bicycle sharrow project; (5) $500,000 for parks and facilities deferred maintenance; (6) $1 million in vehicle replacement (a) Half targeted for alternative fuel vehicles; and (7) Continuation of Green CIP (a) Third phase of streetlight retrofit project; and (b) $840,000 for facility weatherization and retrofit projects.

Vice-Mayor Manheimer noted that the public hearing on the budget will be held on May 22, 2012.

**G. 2012 STATE LEGISLATIVE AGENDA**

City Attorney Oast said that this is the consideration of the City's Legislative Agenda for the 2012 Session of the North Carolina General Assembly.

The session of the North Carolina General Assembly that begins on May 16, 2012 is a "short" session. Essentially, it is a continuation of the 2011-2012 biennial session of the General Assembly that began on January 26, 2011, and adjourned for the first time on June 18, 2011. As Council knows, the legislature has continued to meet sporadically throughout the year to take up such special subjects as redistricting, and considering whether to override the Governor's veto of certain bills.

Despite the fact that this short session or continuation session is more general in nature, the range of bills that may be considered is still fairly narrow. Included among the bills eligible for consideration are (1) Bills that passed out of the chamber in which they were introduced, and that were received in the other chamber ("crossover bills"); (2) Bills implementing the recommendations of study commissions ("study bills"); and (3) Local bills that meet certain requirements (non-controversial, unanimous support among local delegation, etc., "local bills"). The City of Asheville is interested in some bills that fall into each of these categories.

**I. "Crossover" Bills**. There is an 18 page list of bills that were passed out of one house and are eligible for consideration in the short session. That list includes some local bills of interest to Asheville.

One crossover bill, HB 552, is the bill to create the Greater Asheville Regional Airport Authority. Council has previously expressed concerns about this bill, and we will continue to monitor it.

**II. Study Bills**. HB 925 directs the Legislative Research Commission ("LRC") to study whether certain municipal water systems should be conveyed to metropolitan sewerage districts in the interest of promoting operational efficiency. The hearings that have been conducted by the LRC's "Committee on Metropolitan Sewerage/Water System," chaired by Rep. Tim Moffitt of Buncombe County, have focused on Asheville and MSD. As Council knows, the Committee's draft report was published on April 13. Following a comment period, an amended report was voted out of Committee April 19. That report contained a recommendation that the 2013 Session of the General Assembly take action to consolidate the water system with MSD, but further provided that action not be taken "if the parties are engaged in good faith negotiations on this matter." The full LRC will consider the recommendations of the Committee on May 14 (two days prior to the convening of the short session). This proposal, and the report, have been covered extensively in other places, and no attempt will be made to summarize that information here. We will, of course, monitor this bill and keep Council advised of developments.

**III. Local Bills**. Council has long been interested in a bill that would reconfigure the boundaries of Asheville and Woodfin in the area around UNC-Asheville. This is not a new request, but it has been revised. The municipalities of Asheville and Woodfin are adjacent to one another and, in places, share a common boundary. In the area near UNC-Asheville and the River Road/Broadway/US 19-23 Interchange (herein "19-23 Interchange"), however, there are pockets of unincorporated areas that are developed, and should have a municipal level of service available, especially public safety services. Additionally, some properties located in Asheville or Woodfin could be more efficiently served with police, fire, and garbage collection services by the other municipality.

Municipal boundaries in this area do not follow streets or recorded property lines, and this can cause jurisdictional confusion when it is necessary to respond to emergencies or traffic incidents. Perhaps the most dramatic illustration of this phenomenon is that the UNC-A athletic field and track are transected by the City of Asheville's corporate limit such that part of the track is in the City of Asheville, and part of it is in unincorporated Buncombe County. In addition, there are parts of the UNC-Asheville campus (or lands being held for future development by the university), that are located within the Town of Woodfin. Asheville, Woodfin, and UNC-Asheville agree that the campus and associated property should be in the City of Asheville's jurisdiction. The proposed legislation would include all of the State-owned university properties (whether they are currently in Woodfin or unincorporated) in Asheville's corporate limits. In addition, there is a small portion of unincorporated area near the 19-23 Interchange that we are proposing for incorporation into Woodfin. This will eliminate some jurisdictional and service delivery confusion for an important and heavily traveled intersection.

The proposed legislative action affects only State-owned properties, and as such would have no property tax implications. In the past, the owners of private property in the area have objected to the proposed reconfiguration as it affected them, and previous versions of the bill stalled as a result. However, in a bill drafted in 2010, an "opt-in" procedure was proposed for the privately-owned properties in Woodfin such that the political jurisdiction would not change unless the owners requested it. We have contacted all of the affected private property owners.

There has been a new area added to the proposed boundary adjustment. As Council may know, the Town of Woodfin has been working to reconfigure the entrance to the Reynolds Mountain Development, and has proposed a roundabout on Weaverville Highway/Merrimon Avenue near Beaver Drive. The proposed location of this roundabout is where Asheville's and Woodfin's boundaries meet. Discussions among Asheville and Woodfin officials, and with the North Carolina Department of Transportation, have resulted in a proposed boundary reconfiguration such that all of the roundabout and parts of some realigned streets will be located in Woodfin's jurisdiction. As with the 19-23 Interchange, this will eliminate some jurisdictional and service delivery confusion for a heavily traveled intersection. Woodfin officials have discussed this with affected property owners.

**IV. State-wide and Regional Issues**. As occurs with every session of the legislature, other organizations of which the City is a member or in whose activities the City participates adopt their own legislative agendas. Those organizations include the Asheville Area Chamber of Commerce and the North Carolina League of Municipalities. Council may wish to take a position or receive more information with respect to one or more of the items included in those programs.

**Deadlines**. The legislature convenes for the short session on Wednesday, May 16. Local bills must be submitted to bill drafting no later than 4:00 p.m., on Wednesday, May 23, and introduced or filed for introduction no later than 4:00 p.m., on Wednesday, May 30.

Council has previously taken positions on the bills that affect us. Additionally, Council directed the submission of the Woodfin/Asheville boundary reconfiguration request last year. Accordingly, no formal action is needed other than a reaffirmation of Council's previous positions on these matters. If Council wishes to include new or additional matter, that can be done by resolution or motion.

At Council's direction, he will transmit appropriate information, including past resolutions regarding the Water Authority and the airport, to the members of the General Assembly whose district includes Asheville.

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**H. RESOLUTION NO. 12-101 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL**

Vice-Mayor Esther Manheimer said that There currently exists the following three vacancies on the Community Relations Council: (1) vacancy from Ms. Kate Pett whose term expired December 31, 2010; (2) vacancy from Ms. Jill Fromewick who is not interested in serving another term whose term expired December 31, 2011; and (3) vacancy from Ms. Sharon West whose term will expire December 31, 2012.

Mr. Mike Hahn, current member whose term expire December 31, 2011, is eligible to serve another term and is interested in reappointed.

It was the consensus of Council to interview Itiyopiya Ewart, Kathryn Liss, Mike Hahn, Rachael Tanksley-Russell, Frank Dibari, Carol Hallstrom and Chuck Rosenblum. Mr. Dibari and Ms. Hallstrom have since been appointed by the Buncombe County Board of Commissioners. Mr. Rosenblum was unable to attend the interview.

After Council spoke highly of all the candidates, Councilman Bothwell moved to (1) appoint Itiyopiya Ewart to serve the unexpired term of Ms. Pett, term to expire December 31, 2013; (2) appoint Rachael Tanksley-Russell to serve a three-year term, term to expire December 31, 2014; (3) appoint Kathryn Liss to serve the unexpired term of Ms. West, and then a full three-year term, term to expire December 31, 2015; and (4) reappoint Mr. Hahn to serve a three-year term, term to expire December 31, 2014. All terms are until their successors have been appointed. This motion was seconded by Councilman Pelly and carried unanimously.

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**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Rev. Christopher Chiaronmonte cited examples of police harassment in Asheville.

Ms. Judy Strong felt that the even though the City of Asheville owns McCormick Field, they should not use taxpayer dollars to support it. She suggested they contact the Tourism Development Authority and apply for a grant and/or increase user fees. Vice-Mayor Manheimer said that City Manager Jackson would contact her to provide her an explanation of why the City has an obligation to keep their assets up.

Rev. Amy Cantrell, Pastor and Co-Founder of Be Loved Community, and Dr. Bill Pence urged Council to find a safe legal space for people to camp when the shelters are full. They offered to work with the City for a dignified solution.

Mr. John Kleckner said that he is working on a documentary on downtown and would be happy to get their prospective on several of the issues raised by Council at this meeting.

**Mountain Area Information Network Request**

Mr. Tim Ballard, Board Member of the Mountain Area Information Network (MAIN), read a statement from the Board which requested a policy directive by City Council to enable MAIN's continued access to a city-owned cell tower. They requested a 60-day extension to the City's directive that they vacate the tower on May 1. The extension will give Council and City staff ample time to evaluate details of the request.

Councilman Hunt said in the past three weeks there has been a lot of dialogue between MAIN, City staff and City Council. He suggested Council grant the 60-day grace period noting that it would be MAIN's responsibility to respond on the following key questions: (1) what is MAIN's proposal in regard to the past due payments on the lease; and (2) in regard to moving forward in some type of partnership with the City, how would MAIN articulate community need and how would that come together for City participation.

In response to Councilman Hunt, City Manager Jackson said the amount due is long overdue and staff has been providing extensions, gone through a collections agency, with over $37,000 outstanding. Staff tries to be fair and consistent when seeking payment of the debts to taxpayers. If extended, staff will look forward to seeing their proposal to make good on those payments and also the proposal on how they want to partner with the City.

In response to Councilman Bothwell, City Manager Jackson said at this point the recourse is to terminate the services, which is provided for in the contract, but we can certainly apply discretion as management, if endorsed by Council.

In response to Councilman Davis, City Manager Jackson said that we have others looking for that cell tower space.

Councilman Davis said that he also spoke with Mr. Wally Bowen, representing MAIN, who was amenable to a 30-60 day extension. Because we do have others interested in that space, he could support an extension of 30 days only.

Mr. Isaac Coleman, Board member of MAIN, requested Council for the 60-day extension, in that they are trying to serve an under-served population.

City Manager Jackson said that there are two issues. One is the payment of the obligation for use of the cell tower. That is an outstanding debt owed. He didn't think it would take more than 30 days to show good faith and agree to a payment plan. On the other hand, if there is some grant application for the City to bring to Council for different federal/state/non-profit partnership grant where the City would provide in-kind services, that proposal would need to be developed and very clear. Council has considered those kinds of proposals in the past and they have been very well developed with a scope of services, who is the entity that has the grant funds available, what would MAIN do, what is the City being asked to do, what the criteria is for the grant, the performance deliveries, how the public is served, etc. Staff would bring that to Council as they have in the past. We do not have anything of that nature from MAIN. Council has expressed a desire to extend broadband service particularly to segments of the community if there is a good plan and opportunity to structure such an opportunity. The first response as to whether or not MAIN will honor its obligation and agree to some kind of commitment and the question is if there will be a proposal on that. It would be wise for Council, as good stewards of the City's assets and the taxpayer resources, to know within a 30-day timeframe if that plan is forthcoming. In this case they will be responding to Council. We have gone through months in trying to get a response on a payment plan from MAIN. Their other option is to ask Council to waive that debt and enter into another kind of contract proposal. It would need to have a greater level of specificity than staff has been able to secure. The City does not have the ability to gift or do grants, no matter how worthy the agency might be. The City does have the ability to contract for the delivery of public services and typically Council wants those to be performance based contracts. Council also has a process for outside agency grants and contracts of that nature.

Councilman Davis was comfortable with a 30-day extension to receive an answer about how the past due payments would be settled, recognizing if they present some plan, it would take longer for that to be developed.

City Manager Jackson said that within 30-days we should get a response on whether it is a viable organization with which the City should contract with. If there are substantial opportunities to partner that are consistent with the legal requirements, when we report on their payment plan proposal, we can report on what those options might be and how much more time it might take to bring that back in the form of a contract.

In response to Councilman Smith, City Manager Jackson said that he would provide a history on the grant that is being discussed by MAIN members.

It was the consensus of Council to grant a 30-day extension to the City's directive that MAIN vacate the cell tower on May 1.

**VIII. ADJOURNMENT:**

Vice-Mayor Manheimer adjourned the meeting at 10:18 p.m.

Magdalen Bateson
CITY CLERK

MAYOR

Tuesday – May 22, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**INVOCATION**

Councilman Davis gave the invocation.

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led the Pledge of Allegiance.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF CITY OF ASHEVILLE YOUTH LEADERSHIP ACADEMY STUDENTS**

Mayor Bellamy said that five years ago this June, she and the members of the Asheville City Council welcomed the inaugural class of the City of Asheville Youth Leadership Academy – better known as CAYLA. Since that very first day, CAYLA students have exceeded our highest expectations – as role models, as future leaders, as contributors to our greater community. CAYLA was designed to introduce Asheville's young people to professional careers, to assist them in their quest for college, and to develop their leadership skills through volunteering. It is without question that by this definition, CAYLA is a success – but only because the CAYLA students have made it so.

Just this year, they have collectively completed 36 separate community service projects, totaling more than 450 volunteer hours. The graduating CAYLA seniors have ALL been accepted to college and will share their many talents, their dedication, and their enthusiasm on university campuses across the state and region this fall.

Tonight, many of our CAYLA students will be honored further at the annual AHS Awards Night, where they will learn how their hard work has paid off in the form of foundation and community scholarships. I'd like to especially recognize Brianna Rock, who has been named a Gates Millennium Scholar, one of only 1,000 in the entire nation.

The City of Asheville has gained much from your contributions, and we recognize you tonight and challenge you to keep striving for excellence in the months and years to come.

As Mayor she was so proud of the young people who are being recognized today – the CAYLA Class of 2012.

With that, she read the names of the CAYLA students who were in the meeting this evening: Omar Alvarado, LaBrea Baird, Kearra Brownlee, Briana Bunn, Calvin Clark, Brianna Crudup, Rachel Downie, Jalyn Folston, Jalen Freeman, Caleah Hallum, Jaquell Hines, Ceante' Hudson, Markes Jackson-Edgerton, Ashare' Jefferson, Curtis Johnson, Tiffany Jones, Abel Lomeli-Garcia, Manny Lomeli-Garcia, Kasia Maatafale, Alex Mitchiner, Janeka Moore, Tequila

Porter, Brianna Rock, Quanteria Sitton, Ashly Surratt, Fiona Taylor, Lisa Waters, Marcus Whitson, Bryanna Williams, and Christopher Wright.

Mayor Bellamy praised Erika Germer for her hard work on this program.

**B. PROCLAMATION PROCLAIMING MAY 20-26, 2012, AS "NATIONAL PUBLIC WORKS WEEK"**

Mayor Bellamy read the proclamation proclaiming May 20-26, 2012, as "National Public Works Week" in the City of Asheville. She presented the proclamation to Michael Kyle, representing Water Resources; Rachell Banks, representing Fleet Management; Chris Maloney, representing Sanitation; Joel Tweed, representing Transportation; and Larry Buckner, representing Meter Services.

**II. CONSENT AGENDA:**

At the request of City Attorney Oast, and consensus of Council, Consent Agenda Item "P" was added to the Consent Agenda.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 24, 2012**

**B. RESOLUTION NO. 12-102 - RESOLUTION SETTING A PUBLIC HEARING ON JUNE 12, 2012, FOR A LAND USE INCENTIVE GRANT APPLICATION FOR 155 GLENN BRIDGE ROAD**

Community Development Director Jeff Staudinger said that this is the consideration of a resolution setting a public hearing on a Land Use Incentive Grant (per the policy adopted by City Council on March 8, 2011), applied for by the owners/developers of 155 Glenn Bridge Road.

This following report summarizes their application and reports on eligibility and points. The 155 Glenn Bridge Road project entails the development of 176 units of rental housing located at the indicated project address in the City of Asheville. No commercial or other mixed use development is cited in the proposal.

The project, as presented to staff, appears to meet the following Eligibility Requirements,

- Equity: A 20% equity contribution is required. The project developers indicate they will contribute 20.4% equity to the project. This includes unreimbursed value of the land, and other expenses.
- Energy Star Certification: The developers indicate the project will achieve Energy Star certification.
- Legal Costs; the developer must agree to assume all legal costs if the LUI is challenged: The developer has agreed to assume all legal costs if the Land Use Incentive policy is challenged.

The project does not meet the following eligibility criteria:

- Inside city limits, within ¼ mile of designated major highways: The project is located approximately .6 mile from Hendersonville Road, and therefore about ¼ mile outside of the eligible area. The developer has requested a waiver of this eligibility criteria.

*Public Benefit*

The project proposes the following Public Benefit Elements:

- Affordable Housing units with assured affordability at that rent level for a minimum of ten years: 40% of total units (40 points)
- Workforce Housing units with assured affordability at that rent level for a minimum of ten years: *50% of total units* (10 points)
- Green Building/Energy: *Energy Star certified* (5 points)

The project therefore scores 55 points. Based on this score, the project would be eligible for a 5.5 year Land Use Incentive Grant.

The project meets the following 2010-11 Strategic Plan Goals: (1) *Affordable*: Create and preserve affordable rental and homeownership opportunities in Asheville. The project is directly related to the opportunity for public/private partnerships and innovative financing to incentivize affordable housing development; and (2) *Green and Sustainable*: Set and develop a plan for implementing a community reduction goal. The project is being built to Energy Star standards, and will be certified by Energy Star.

The project meets applicable Master Plans in the following ways: (1) The project supports the goals of the *2009 City Transit Master Plan* by its location "along major transit corridors..." ; and (2) The project supports the goals of the *2009 Sustainability Management Plan*, which calls for the City to encourage Transit Oriented Development. According to sources cited by the developer, "the minimum density at which rapid transit can operate efficiently is approximately 12 units per acre. The Weirbridge Village development is 17 units per acre."

*Exemption Request*

The developer has requested an exemption from the eligibility requirement that a project be located within ¼ mile of identified major highways. The project is located .6 miles from an eligible transit route, so slightly more than ¼ mile from the eligible area boundary. It is, however, in an area identified as "Location Efficient" in the Center for Neighborhood Technology study of location efficiencies in Asheville; although public transportation at or closer to this location is not in the Transit Master Plan. The developer notes that the project is located close to retail employment opportunities.

Fiscal Impact: Estimated maximum value of Land Use Incentive: The current assessed value of the property is $1,062,500. The developer's estimate of completed project taxable value is $23,881,118. The current annual city tax, based on current assessed value, is $4,462.50. The annual estimated city tax post completion, based on the developer's estimate is $100,300.70. Thus, the estimated annual Land Use Incentive Grant would be $95,838.20, the exact amount to be determined by the length, in years, of the grant award, and the actual assessed value of the development upon completion. If approved for 5.5 years, the estimated Grant would be $527,110.10.

The estimated amount of fees payable for Zoning Permit, Building Permit, Driveway Permit, Grading Permit, Plan Review Fees and Water Service Connection Fee is $108,632. The value of each 10% of the fee rebate would be $10,863.20. The exact amount would be determined by the percentage of fee rebate awarded as part of the Land Use Incentive Grant. If approved at the 55 point level, the fee rebate would be $59,747.60.

The Housing and Community Development Committee has reviewed this application and recommends that Council set a public hearing date for its consideration.

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**C. RESOLUTION NO. 12-103 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF**

**TRANSPORTATION TO FUND THE METROPOLITAN PLANNING PROGRAM, SECTION 5305 OF THE FEDERAL TRANSIT ADMINISTRATION**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the North Carolina Department of Transportation (NCDOT) to fund the Metropolitan Planning Program, Section 5303 of the Federal Transit Administration (FTA).

The FTA Section 5303 Metropolitan Planning Program is part of the annual Unified Planning Work Program (UPWP) of the French Broad River Metropolitan Planning Organization (FBRMPO), which outlines transportation planning tasks to be performed by the FBRMPO. The Metropolitan Planning Program is designated to pay exclusively for transit planning activities, such as grants administration and reporting activities, short range and long range transit planning, transportation improvement program preparation, Title VI and DBE programs, and planning and operational analyses. The funds are used to supplement the Transit Projects Coordinator position (90% of the grant) and a portion of the Transportation Manager position (the remaining 10%) for time spent on transit planning.

FY 2011-12 funding totals $63,600. The subject grant will provide 80% of the anticipated funding ($50,880), the North Carolina Department of Transportation will provide 10% ($6,360), and the City will provide the remaining 10% ($6,360). The grant funding and the City's local match in the amount of $6,360 are currently budgeted in the Transportation Department's approved budget for the current fiscal year.

This action complies with the current City Council's Strategic Operating Plan in the fiscal responsibility focus area by operating the City of Asheville to the highest levels of fiscal responsibility.

The Transit Commission supports the subject action.

Pros:

- The subject grant supplements funding for two existing positions.
- The subject grant enables the City of Asheville to use $57,240 in Federal and State funds for transit planning activities.

Con:

- A 10% local match in the amount of $6,360 is required.

The total grant funding for Fiscal Year 2011-12 is $63,600. The City is required to provide a 10% local match in the amount of $6,360. The anticipated grant funding and the City's local match in the amount of $6,360 are currently budgeted in the Transit Services fund.

City staff recommends that City Council adopt a resolution authorizing the City Manager to enter into an agreement with the North Carolina Department of Transportation to fund the transit planning program, Section 5303 Metropolitan Planning Grant of the Federal Transit Administration for FY 2011-12.

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**D. RESOLUTION NO. 12-104 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL ON MAY 25, 26 AND 27, 2012**

**RESOLUTION NO. 12-105 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR**

**UNFORTIFIED WINE AT THE 5 WALNUT ANNIVERSARY BLOCK PARTY ON JUNE 14, 2012**

**RESOLUTION NO. 12-106 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BREWGRASS FESTIVAL ON SETPEMBER 15, 2012**

**RESOLUTION NO. 12-107 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES FOOTBALL GAMES ON JUNE 18, 2012, JUNE 30, 2012, JULY 14, 2012, JULY 28, 2012, AUGUST 11, 2012, AND SEPTEMBER 1, 2012**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Mountain Sports Festival on May 25, 26 & 27, 2012; the 5 Walnut Anniversary Block Party on June 14, 2012; the Brewgrass Festival on September 15, 2012; and the Asheville Grizzlies Football Games on June 18, 2012, June 30, 2012, July 14, 2012, July 28, 2012, August 11, 2012, and September 1, 2012.

- Mountain Sports Festival, Inc. has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Mountain Sports Festival and allow for consumption at this event.

  The component of the Mountain Sports Festival requesting alcohol will be held on Friday, May 25, 2012, from 4:00 p.m. – 10:00 p.m., Saturday, May 26, 2012, from 10:00 a.m. – 10:00 p.m. & Sunday, May 27, 2012 from 12:00 p.m. – 6:00 p.m. within the boundaries of Carrier Park, as per the event area limits referenced on the accompanying site map.

- Arts2People has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the 5 Walnut Anniversary Block Party and allow for consumption at this event.

  The 5 Walnut Anniversary Block Party will be held on Thursday, June 14, 2012, from 5:00p.m. – 10:00 p.m. within the boundaries of Walnut Street between the intersections of Broadway and Carolina Lane, as referenced on the accompanying site map.

- Big Brothers Big Sisters WNC has requested through the City of Asheville Development Services Center that City Council permit the sale of beer and/or unfortified wine at the Brewgrass Festival and allow for consumption at this event.

  The Brewgrass Festival will be held on Saturday, September 15, 2012, from 12:00 p.m. – 7:00 p.m. within the boundaries of Martin Luther King Jr. Park, as per the event area limits referenced on the accompanying site map.

- Asheville Grizzlies has requested through the City of Asheville Development Services Center that City Council permit the sale of beer and/or unfortified wine at the Asheville Grizzlies Football Games and allow for consumption at these events.

  The Asheville Grizzlies Football Games will be held on Monday, June 18, 2012, Saturday, June 30, 2012, Saturday, July 14, 2012, Saturday, July 28, 2012, Saturday, August 11, 2012, and Saturday, September 1 2012, from 5:00 p.m. – 11:00 p.m. within the boundaries of Memorial Stadium, as per the event area limits referenced on the accompanying site map.

These actions have no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for the Mountain Sports Festival, Arts2People, and Big Brothers Big Sisters of WNC.

Con:

- Potential for public safety issues

There is no fiscal impact.

City staff recommends City Council adopt the resolutions authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Mountain Sports Festival, the 5 Walnut Anniversary Block Party, the Brewgrass Festival and the Asheville Grizzlies Football Games.

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**RESOLUTION NO. 12-105 – RESOLUTION BOOK NO. 34 – PAGE 376**
**RESOLUTION NO. 12-106 – RESOLUTION BOOK NO. 34 – PAGE 379**
**RESOLUTION NO. 12-107 - RESOLUTION BOOK NO. 34 – PAGE 382**

**E. RESOLUTION NO. 12-108 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER WITH ASHEVILLE STAFFINIG INC. FOR TEMPORARY SERVICES IN THE CITY PARKING GARAGES**

Summary: The consideration of a resolution authorizing the City Manager to execute a change order for a contract with Asheville Staffing, Inc for temporary services in the City's parking garages and surface parking lots through June 30, 2012.

The City of Asheville, through the Parking Services Division, currently operates three parking garages with a fourth garage, Biltmore Avenue Parking Garage opening on or about July 1, 2012. In addition, the Parking Services Division operates several monthly parking and pay-by-space surface parking lots downtown. Parking Services Division uses a combination of City employees and contract temporary workers to provide service and customer assistance in these facilities and lots. Generally, City employees work during the business day and early evenings while contract temporary services are used for fill-ins, special events, and to extend garage hours during late evenings, weekends, and holidays. Use of temporary workers allows the greatest flexibility as needs vary greatly depending on time of year and events booked at the U.S. Cellular Center.

Effective July 1, 2011, general service contracts, including temporary labor, between $30,000.00 and $90,000.00 were required to pay the Living Wage as set by the City of Asheville. Parking Services solicited bids from interested vendors and the contract was awarded to Asheville Staffing, Inc. including the Living Wage provision.

The current contract with Asheville Staffing is not to exceed $89,000.00. Expanded hours to provide better customer service and the addition of a major special event, the Southern Conference Basketball Tournament, will result in a shortfall in the contract amount. Therefore, staff is requesting authorization to execute a change order to make the contract not to exceed $105,000.00.

This action complies with the City Council Strategic Operating Plan in that it provides safe facilities for residents and visitors to park in the most cost effective manner and provides better customer service

Pros:

- Provides safe and convenient facilities for residents and visitors to park in.
- Using temporary service employees is the most cost effective and flexible manner to augment the Parking Services Division's staffing requirements.

Con:

- Additional $16,000.00 expenditure.

The necessary funds are already budgeted in the Parking Services Fund's Operating Budget for FY 2011-12.

City staff recommends that City Council adopt a resolution authorizing the City Manager to sign a change order in the contract with Asheville Staffing to increase the contract amount to not exceed $105,000.00.

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**F. RESOLUTION NO. 12-109 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH COPELAND HOLDINGS LLC FOR SECURITY SERVICES IN THE CITY PARKING GARAGES**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Copeland Holdings, LLC for security services in the City's parking garages for July 1, 2012, through June 30, 2013.

The City of Asheville, through the Parking Services Division, currently operates three parking garages; Civic Center, Rankin Avenue, and Wall Street. A fourth garage, Biltmore Avenue Parking Garage will open on or about July 1, 2012. The Parking Services Division uses a combination of City employees and contract security officers to provide security and customer assistance in the garages. Generally, City employees work during the business day and early evenings while contract security is on duty during late nights, weekends, and holidays.

During September 2011, the Parking Services Division requested quotes for service from interested vendors resulting in 20 vendors responding. Copeland Holdings, LLC provided the lowest price for the service.

During November 2011, City Council directed staff to review the merits of bringing all security functions in house. Parking Services negotiated a short-term contract with Copeland Holdings to provide security services during the review period. Staff subsequently determined that due to operational efficiency and flexibility it was more advantageous to the City to contract for these security services.

During March 2012, City Council expanded the range of service contracts subject to Living Wage requirements. Copeland Holdings was informed of these changes and adjusted their wage scale accordingly; raising the pay of the guards to $11.35 per hour. By providing the Living Wage provision, it is projected to cost about $50,000 (annual) more than a similar contract without the Living Wage provision. On a normal week, a total of 215 hours of security services will be needed. In addition, the Parking Services Division will request additional security support during periods of high demand; for example, Bele Chere, Southern Conference Tournament, Moogfest, employee vacations, or large concerts at the Civic Center. The total cost of the one year security contract will be $170,000.00.

This action complies with the City Council Strategic Operating Plan in that it provides safe facilities for residents and visitors to park in the most cost effective manner.

Pros:

- Provides safe facilities for residents and visitors to park in.
- Using contract security is the most cost effective manner to augment the Parking Services Division's security requirements.
- Achieves the City of Asheville's assurances to its partners at 51 Biltmore that adequate security will be maintained in the Biltmore Avenue Parking Garage.
- Includes the Living Wage provision.

Con:

- Total cost of $170,000.

The necessary funds are budgeted in the Parking Services Fund's Proposed Operating Budget for FY 2012-13.

City staff recommends that City Council adopt a resolution authorizing the City Manager to sign a one-year contract with Copeland, Holdings LLC to provide security services in the City's parking garages at a total cost not to exceed $170,000.00 per fiscal year.

**RESOLUTION BOOK NO. 34 – PAGE 386**

**G. RESOLUTION NO. 12-110 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH DISASTER RECOVERY GROUP AND TREE SERVICE INC. FOR THE TUNNEL ROAD SIDEWALK CONSTRUCTION PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a contract (and all change orders in the amount of 20% of the contract or $38,000.00) with Disaster Recovery Group and Tree Service, Inc., in the amount of $186,120.00 for the project known as Tunnel Road Sidewalk Construction Project, Project # ENG-11-12-004.

An informal request for bids was issued on March 13, 2012, and bids were received on April 10, 2012. There were a total of 5 bids received with the lowest responsive bidder being a North Carolina based contractor, Disaster Recovery Group and Tree Service, Inc., located in Arden, N.C., with an amount of $186,120.00. With the addition of a 20% contingency, the total budgeted amount for this project is $224,120.00. This will be a unit price contract and not a lump sum contract and is part of the City of Asheville's CIP program.

This action complies with the City Council Strategic Operating Plan of Multimodal Transportation in that it will meet the need of increasing the output of sidewalk construction and provide sidewalk in an area that is in need of sidewalk linkage.

Pros:

- Provides a pedestrian linkage by connecting existing sidewalks.
- Will be a step forward in meeting the City's Strategic Plan and current fiscal year CIP goals.
- Is listed as an identified need on the City of Asheville pedestrian plan.

Cons:

- Project management and contract administration will consume staff time and City funds.
- Temporary lane and driveway closures.
- The new construction will increase the maintenance load on the City.

This project is part of the $1.3 million sidewalk construction program that City Council approved as part of the FY 2011-12 Capital Improvement Budget. Funding will come from debt proceeds.

Staff recommends City Council to authorize the City Manager to execute on behalf of the City of Asheville a contract with Disaster Recovery Group and Tree Service, Inc., in the amount of $186,120.00 for the project known as Tunnel Road Sidewalk Construction Project, and all change orders in the amount of 20% of the contract or $38,000.00.

**RESOLUTION BOOK NO. 34 – PAGE 387**

**H. RESOLUTION NO. 12-111 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH ONTARIO INVESTMENTS INC. FOR GOLF CARTS AND MAINTENANCE EQUIPMENT AT THE ASHEVILLE MUNICIPAL GOLF COURSE**

Summary: The consideration of a resolution authorizing the City Manager to enter into a lease agreement renewal with Ontario Investments, Inc. for golf carts and maintenance equipment at the Asheville Municipal Golf Course.

In 2009, the City of Asheville entered into a one-year lease agreement with an option to renew for one additional year with Ontario Investments at a cost of $123,158 for golf carts and maintenance equipment at the Asheville Municipal Golf Course. In 2010, the City entered in a one-year renewal of the lease at a cost of $92,369. In 2011, the City entered into a ten month-renewal of the lease at a cost of $57,150 in anticipation of conducting the process to outsource the management of the golf course. The lease expires June 30, 2012.

The City is in the process of considering proposals from private golf course management firms to operate the golf course. This process is expected to continue through the latter part of 2012. The City wishes to renew the lease an additional six months at a cost of $34,290 while the option to outsource golf course operations is considered.

This action complies with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it provides ongoing maintenance and operations for the City's park system.

Pros:

- Investment to maintain and care for the Asheville Municipal Golf Course, a City-owned asset.
- Provide quality service for ongoing, core facility maintenance services.
- Fulfill commitment for maintenance of the golf course.

Cons:

- None

The six-month lease renewal will cost $34,290. The funds to support the lease renewal are included in the Proposed FY 2012-2013 Golf Fund Operating Budget. Funding is contingent upon City Council approving the FY 2012-2013 operating budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a lease renewal agreement with Ontario Investments Inc. for golf course carts and maintenance equipment at the Asheville Municipal Golf Course not to exceed $34,290 contingent upon City Council approving the funds associated with the lease agreement as part of the City's Proposed FY 2012-2013 Golf Fund Operating Budget.

**RESOLUTION BOOK NO. 34 – PAGE 388**

**I. RESOLUTION NO. 12-112 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH WESTERN WATER PROOFING COMPANY FOR CONSTRUCTION, RESTORATION, REPAIR AND MOISTURE MITIGATION TO THE CITY HALL BUILDING**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Western Waterproofing Company for the restoration, repair, and moisture mitigation to the Asheville City Hall Building.

The Asheville City Hall Building is recognized throughout the country as an Art Deco masterpiece. Douglas D. Ellington, an architect, who came to Asheville in the mid-1920s, designed the eight-story building, which was completed in 1928. Ellington stated that the design was "an evolution of the desire that the contours of the building should reflect the mountain background."

Asheville City Council approved Resolution Number 10-151 on July 27, 2010, authorizing a contract with Sutton-Kennerly & Associates to prepare construction and bid documents, conduct special inspections, and authorized prototype repairs and testing. Based upon the earlier investigation by Sutton-Kennerly & Associates and the prototype repairs conducted in 2011, specifications were developed to mitigate water infiltration. A Request for Qualifications was advertised for construction firms. Qualification criteria included, but was not limited to the following:

- Unlimited General Contractor's license in the State of North Carolina;
- A minimum of twenty years continuous and ongoing experience in the repair and restoration of historic masonry structures to include extensive experience with terra cotta repairs;
- A sufficient number of experienced management, supervisory staff, superintendents, expert tradesmen, journeymen, and laborers to complete a minimum of 90% of the work with the contractor's own forces without subcontracting the work;
- Proof the required insurance and bonding capacity to meet the insurance and bonding capacity of the entire project.

Pursuant to the RFQ, firms were pre-qualified and an Invitation For Bid was issued. Only those firms prequalified were allowed to respond to the IFB. Western Water Proofing Company, Charlotte, North Carolina was the low bid. The project has multiple unknowns such as number of bricks, terra cotta tiles, and other exterior material to be repaired or manufactured. Some of the bricks and terra cotta tiles are damage being beyond repair and will need to be replaced. The project has alternatives that are included to improve the long-term viability of the repairs. These include vented metal rain screen on the back side of the existing parapet walls and removing the existing lead coated copper hidden gutter liners at the seventh and ninth floor levels and installing new self adhering inner liner and new lead coated copper gutter liner at all locations. The base bid with alternatives is $3,682,700. Unit prices were included for individual brick replacement ($14.40 each), shelf angle extension ($65.00 per foot), terra cotta molding ($2,500 each), terra cotta replication ($330 each), terra cotta surface repair ($46 per cubic foot), terra cotta repair by epoxy bonding ($145 each), and blocking replacement ($24 per board foot).

Due to the complexity and historic nature of this project, a number of unknown repair/ replacements may become evident that are not within the scope of the bid specifications. Included in the total project is a contingency for the unknowns and future years scope of work. The renovation/remodel of the seventh and eighth floors will not begin until the third year of the project. The prototype repairs and engineering approved for the project are $523,100. New HVAC for the seventh and eighth floors utilizing the existing boiler and chiller is estimated by Sutton-Kennerly & Associates to be $375,000. The demolition and renovation of the 7$^{th}$ and 8$^{th}$ floors is $127,500. This includes new furniture, floor covering, walls, ceiling, tile, restrooms, etc. The total budget is $5,950,000 to complete the water mitigation repairs and to renovate the seventh and eighth floors. Due to the high potential for change orders, staff recommends Council authorize the full budgeted amount.

| | |
|---|---|
| • Base Bid with alternates | $3,682,700 |
| • Contingency | $1,241,700 |
| • Approved Expenditures (Engineering & prototype repairs) | $ 523,100 |
| • 7th & 8th floor HVAC | $ 375,000 |
| • 7th & 8th floor renovation/remodel | $ 127,500 |
| Total Budget | $5,950,000 |

It is estimated that the construction schedule will expand over several fiscal years, due to temperature fluctuations. For example, painting cannot be conducted with temperature below 50 degrees Fahrenheit or masonry work conducted with temperatures below 40 degrees Fahrenheit or when freezing conditions exist. It is anticipated the water mitigation repairs will be completed by November 2014. There will be periods when the project will be shut down to accommodate inclement weather. This will allow the project work to be phased. Additionally this will also allow time for the reproduction of any sections of the existing terra cotta that are beyond repair. The lead time for reproductions such as these is 8 to 12 months. Based upon properly performed research, the project work can be completed in three phases with two inclement weather shut downs between the three phases.

Pros:
- The City Hall Building is an architectural treasure and the crown jewel of Asheville. Restoration of the building is essential to the City's historic and cultural fabric.
- The approval of the resolution authorizing the contract for construction allows the repair and mitigation work to begin.
- Funding for the project is currently in the budget and funded by debt proceeds.

Cons:
- Administering a project of this size and following through on implementation will require significant staff time.
- A delay will further deteriorate the building and could threaten its structural integrity.

This project supports the City's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities.

The cost of the base bid with alternates for the construction to mitigate water infiltration is $3,682,700. Additional costs have been identified for specific known conditions but with unknown quantities. Additional unknown conditions are anticipated as with any major project, especially with a building of this age and historic nature. The total cost of the project including engineering, prototype repairs, construction, and the renovation of the 7th and 8th floors is anticipated not to exceed the $5,950,000 budget.

City staff recommends that City Council adopt a resolution authorizing the City Manager to sign the contract with Western Waterproofing Company and future change orders associated with the project not to exceed the total budget amount.

**RESOLUTION BOOK NO. 34 – PAGE 389**

**J. RESOLUTION NO. 12-113 - RESOLUTION AUTHORIZING ACCEPTANCE OF CONVEYANCE AND RECORDATION OF DEEDS FOR CERTAIN WATER SYSTEM ASSETS FROM BUNCOMBE COUNTY**

Summary: The consideration of a resolution authorizing acceptance of conveyance and recordation of deeds for certain water system assets from Buncombe County.

There are two conveyances proposed: (1) reversion of recreational facilities and (2) conveyance of water lines and facilities.

**1. Reversion of Recreational Facilities**: Pursuant to the 1981 and 1996 Water Agreements, Buncombe County assumed ownership and maintenance responsibility for several regional recreation facilities: Recreation Park/WNC Nature Center, Municipal Golf Course, McCormick Field, and Aston Park Tennis Center. The facilities were deeded to the County, but ownership of these facilities was subject to reversion back to the City in the event of termination of the agreement.

For reasons unrelated to the termination of the Water Agreement, Aston Park was re-conveyed to the City by deed in January of 2005. As of the effective date of termination of the Water Agreement, June 30, 2005, ownership of the remaining properties reverted to the City by operation of the language in the agreement and deeds, and the City now owns and maintains them.

While a deed to re-convey these properties (McCormick Field, Recreation Park/Nature Center/Golf Course) is not legally necessary for the reversion to the City to be effective, it is helpful for clearing up title issues in the event there is ever a transaction involving third parties or financing, such as survey work, boundary adjustments, facility leasing, or operating agreements. Accordingly, we have asked Buncombe County to convey these properties by non-warranty deed, formalizing the reversion.

**2. Conveyance of Water Lines and Facilities**: As Council knows, Buncombe County owns about 20 miles of water lines in various places in the County, and also owns the South Buncombe pump station and storage tank. Since the termination of the Water Agreement in 2005, the City has been maintaining these lines and facilities pursuant to an agreement with Buncombe County. Buncombe County has offered to transfer the lines and the pump station to the City, along with associated facilities (valves, hydrants, meters, etc.) and easements.

A resolution authorizing both of these conveyances was adopted by the Buncombe County Board of Commissioners at its meeting on May 15. The resolution accepts the conveyance of the pump station and water line properties, and authorizes the recordation of deeds for those facilities and for the recreation facilities that previously reverted to the City.

Pros:

- Consolidates ownership of the water system and facilities in the entity that operates the system.
- Eliminates necessity for a separate agreement for maintenance of lines and facilities.
- Clears potential issues with title to property.

Con:

- Slight increase in maintenance costs.

Other than the minimal increase in maintenance costs in the Water Resources Fund, there is no budget impact. The water lines and facilities will need to be added to the City's fixed asset system. The current replacement value of those assets is approximately $6.2 million. Staff will calculate the fair market value of the assets and add them to the City's fixed asset record based on that calculation. The recreational facilities were previously added to the City's fixed assets.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 34 – PAGE 390

**K. RESOLUTION NO. 12-114 - RESOLUTION APPROVING THE 2012 UPDATE TO THE TEN YEAR SOLID WASTE MANAGEMENT PLAN FOR THE JURISDICTION OF BUNCOMBE COUNTY**

Summary: The consideration of a resolution supporting the Buncombe County Solid Waste Plan to protect the health and environment of the Asheville area through safe and effective management of municipal solid waste.

North Carolina General Statute 130A-309.09A (b) requires Asheville to complete an individual Solid Waste Plan or to cooperatively partner with other entities on a regional plan. Historically Asheville has cooperatively partnered with Buncombe County supporting their regional plan, most recently in June, 2009.

Although there are no noteworthy changes to the regional plan, staff did include updates to reflect the City's new single-stream recycling program and the significant changes expected from that endeavor. Additional changes include television and electronics disposal consistent with the new state law, evaluation of food and yard waste disposal, and evaluation of the budgetary impacts of landfill costs on regional solid waste disposal.

Pros:

- The plan collectively focuses the responsible entities efforts.
- Identifying goals clarifies the purpose of solid waste programs by identifying specific strategies and objectives.
- Partnering allows consolidated regional plan.
- Meets state requirement(s).

Cons:

- State required to have plan, so individual plan would be needed.
- Individual plans lose broader impact and collaboration.

This action meets Council's goal on several fronts: It allows the City to partner with allied agencies on a common issue project; helps identify and focus efforts on clean and green initiatives, and allows for a more regional impact by sharing the City's lofty goals and objectives, particularly with regard to our green efforts.

Goals reported in the proposed plan are consistent with Council and Departmental goals, therefore, no additional fiscal impact.

Staff recommends that Asheville City Council adopt a resolution approving and supporting the update to the 2012 Buncombe County Regional Solid Waste Plan.

At the request of Councilman Smith, and consensus of Council, staff was directed to explore a county-wide composting facility.

RESOLUTION BOOK NO. 34 – PAGE 391

**L. RESOLUTION NO. 12-115 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH SIRE TECHNOLOGIES FOR THE INTEGRATED DOCUMENT MANAGEMENT SOFTWARE SYSTEM**

**ORDINANCE NO. 4083 - BUDGET AMENDMENT FOR THE INTEGRATED DOCUMENT MANAGEMENT SOFTWARE SYSTEM**

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Summary: The consideration of: 1) a resolution authorizing the City Manager to enter into a contract for the Integrated Document Management Software Replacement Project with Sire Technologies and other suppliers in total amount not to exceed $107,600 for software, hardware, and services, and 2) a budget amendment in the amount $107,600 from unexpended capital funds in the Building Security and Business Technology Improvement Projects (BTIP).

An extensive Request for Proposals (RFP) process for Integrated Document Management software was conducted in late 2011 and early 2012. A survey of departments and end users was used to guide the RFP requirements. In addition to system requirements, the RFP included minimum proposal criteria, described the criteria for initial proposal evaluation and established finalist vendor selection activities and criteria. Responses were received from 11 vendors, and evaluated by a team that included IT, Police, Fire, Building Safety, Human Resources, Finance, Public Works, Legal, and the City Manager's Office.

A second stage of evaluation and due diligence was done for the 3 vendors who substantially met the RFP requirements. The 8 vendors who were not advancing to the second stage received notification from staff.

City staff met with officials from the Criminal Justice Information System (CJIS) to ensure compatibility and security of a new document management software system. Further, specific reference checks were performed with other law enforcement agencies to validate the appropriateness of the proposed software systems. After completing due diligence and reference checks, staff is seeking authority from City Council to enter into contract negotiations and sign a contract with Sire Technologies.

The project will provide an integrated software system that will support City staff throughout the organization in the appropriate use, storage, retrieval, archiving, and potential disposal of documents following defined business rules and state regulations in a manner that takes advantage of best practices and improves the efficient use of documents and related information resources.

This action supports City Council's Strategic Operating Plan as follows: (1) Supports City Council "Green" goal by implementation of processes that will require significantly less paper; and (2) Supports City Council goal to "create meaningful performance measures for programs and services."

Pros:

- Replaces an unsupported proprietary system that has reached its end of life with a system based on open standards
- Enhances ability to streamline and eliminate paper-based processes
- Provides secure, long-term digital storage and retrieval of critical documents throughout the organization, including the conversion of more than 2 million existing documents
- Improves quality and accessibility of information for decision support and business planning.

Cons:

- Any software implementation causes some degree of organizational turbulence during implementation.
- Allocated unexpended capital funds that could be used for other purposes.

As noted above, the total cost of this contract will not exceed $107,600. A portion of the project budget needed for this contract ($60,600) will be funded from savings realized by IT Services in the execution of the BTIP project. The remaining $47,000 needed for this project will be allocated from unexpended funds in the existing capital budget for Building Security.

City staff recommends City Council adopt: 1) a resolution authorizing the City Manager to enter into contracts for the Integrated Document Management Software Replacement Project with Sire Technologies in total amounts not to exceed $107,600 for software, hardware, and services, and 2) a budget amendment in the amount $107,600 from capital savings in the Building Security and BTIP projects.

**RESOLUTION BOOK NO. 34 – PAGE 392**
**ORDINANCE BOOK NO. 27 – PAGE 366**

**M. RESOLUTION NO. 12-116 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDED PROFESSIONAL SERVICES CONTRACT WITH BETSCH ASSOCIATES/PBC+L FOR THE PURPOSE OF CONTINUED DESIGN SESRVICES FOR ADDITIONAL RENOVATIONS TO THE U.S. CELLULAR CENTER**

Summary: The consideration of a resolution to authorize the City Manager to execute an amendment to the professional services contract with Betsch Associates/PBC+L for design services related to the U.S. Cellular Center renovations extending the term of the contract and expanding the scope of the work in an amount not to exceed $205,855.

Betsch Associates/PBC+L provided design services for renovation project that helped the City achieve its goal of hosting the Southern Conference tournament. The original contract provided for the possibility of additional phases of design work. This amendment covers additional improvements that are consistent with our continued collaborative partnerships with Tourism Development Authority (TDA), Buncombe County, U.S. Cellular and SoCon. Our demonstration of good stewardship and proper plan development helped in securing additional grant funding from the TDA for continued improvements to the U.S. Cellular Center.

This action complies with the City Council Strategic Operating Plan's Fiscal Responsibility goal of developing strategic partnerships to leverage resources for infrastructure and CIP projects. This action also complies with the Civic Center Commission Master Plan that encourages continuing renovations for the facility, and supports the goal of developing new partnerships. It has been reviewed and recommended by the Civic Center Commission.

Pros:

- Action updates the professional services contract to meet the obligations required by the TDA grant approval.
- Action meets the requirements to facilitate the Southern Conference, and the resulting economic impact.
- Action will support improved facilities and prolonged economic strength for the U.S. Cellular Center.
- Action leverages significant partnership funding, with the City's commitment to CIP, to allow for greater levels of future renovation.

Con:

- None.

The design and construction costs to date for the Civic Center renovations have come in under budget. Thus, there is sufficient budget in the existing Southern Conference Renovations capitol project to fund this contract amendment without increasing the overall budget for the project. Funding for the additional improvements that are consistent with our continued collaborative partnerships with Tourism Development Authority (TDA), Buncombe County, U.S. Cellular and SoCon will be included in the FY 2012-13 budget.

Staff recommends approval of a resolution to authorize the City Manager to execute an amendment to the professional services contract with Betsch Associates/PBC+L for continued construction design services for the U.S. Cellular Center Renovations in the amount of $205,855.

**RESOLUTION BOOK NO. 34 – PAGE 393**

**N. RESOLUTION NO. 12-117 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR GRANT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAMS OF THE U.S. DEPT OF JUSTICE**

Summary: The consideration of a resolution authorizing the City to apply for funds through the 2012 Byrne Justice Assistance Grant – Local Solicitation in the amount of $56,927.

The Asheville Police Department requests authorization to apply for the Edward Byrne Justice Assistance Grant (JAG) – Local Solicitation Award 2012. This is a predetermined amount of funds based on the Part 1 Uniform Crime Reporting Crimes. If the grant is approved the Asheville Police Department and Buncombe County Sheriff's Department will be allocated $56,927 based on the award matrix, with Asheville receiving $41,582 and Buncombe County receiving $15,345. The distribution of funds has been approved through a signed MOU.

APD plans to purchase in-car video systems to place in patrol cars. These recordings would generally serve as evidence to be utilized in court for the prosecution of criminal cases. However, these recordings could also be used to aid in resolving allegations of wrongdoing by officers. This would allow for an even greater level of protection of officers and citizens. The digital cameras provide high quality and high resolution video/audio recording of events in and around the patrol car. Recordings such as this help protect the interests of citizens as well as the interests of police officers. Recordings captured with these cameras could potentially aid in mitigating potential civil liability for the City of Asheville by illustrating in detail the actual events that transpired. The secure evidentiary storage and wireless upload capabilities of the system create a user friendly system that is extremely secure and versatile.

The Buncombe County Sheriff's Department plans to purchase a throwbot robotic mobile surveillance system, digital imagery equipment, and TASER X2s. The size and methods of deployment are more versatile than traditional robots and will enhance officer safety by transmitting images back to a display for viewing. This digital imagery equipment enhances the ability to capture non-testimonial identification imagery and will provide for positive identifications quicker. TASER X2s will allow deputies to deal with one or multiple persons at a time with less lethal force – thus enhancing officer and community safety.

There will be an expense of $41,582 by the APD for the in-car video system. The Buncombe County Sheriff's Department will expend $15,345 for the purchase of a throwbot portable surveillance robot, digital imagery equipment and TASERs. This accounts for the total allocation of $56,927 for this Grant.

This is a 100% non-matching grant that will enable the APD to greatly enhance documentation of patrol related activities such as vehicle stops, pursuits, etc. The video evidence will prove to be very valuable in court for both civil and criminal offenses. Additionally, such evidence will be valuable to for internal investigations into officer actions and encounters. This will enhance accountability for officer actions and increase officer and public safety.

This action complies with City Council's Strategic Operating Plan in the Focus Area - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities.

Pros:

- Increasing In-Car video will allow for better documentation of police related incidents.

- Increases officer and citizen accountability through recorded interactions.

Con:

- None.

There is no fiscal impact at this time for City Council to approve the resolution authorizing the City to apply for the grant. If the grant is awarded, there would be maintenance and replacement costs for the equipment that would need to be included in future fiscal year budgets.

City staff recommends City Council adopt the resolution authorizing the City Manager to apply for grant funds through US Office of Justice Programs in the amount of $56,927.

**RESOLUTION BOOK NO. 34 – PAGE 394**

**O. RESOLUTION NO. 12-118 - RESOLUTION SETTING A PUBLIC HEARING TO (1) AUTHORIZE EXPENDITURES FOR ECONOMIC DEVELOPMENT PURPOSES (INFRASTRUCTURE AND SITE IMPROVEMENTS) IN THE CRAVEN STREET/WAYNSVILLE AVENUE AREA; AND (2) AUTHORIZE AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH NEW BELGIUM BREWING**

Summary: The consideration of a resolution setting a public hearing to authorize expenditures for economic development purposes (1) to provide and improve public infrastructure in the vicinity of Craven Street and Waynesville Avenue to serve an industrial facility to be constructed by New Belgium Brewery, and (2) to authorize an economic development incentive agreement with New Belgium.

In connection with the decision of the New Belgium Brewing to locate a facility in Asheville, the City proposes to undertake certain improvements to the public infrastructure in the area where New Belgium proposes to locate - - Craven Street and Waynesville Avenue in West Asheville. Most of these improvements are on public land and facilities and will benefit the New Belgium facility indirectly. Some improvements, such as storm-water facilities and increasing the size of waterlines will benefit the New Belgium facility directly.

The City also proposes to enter into an economic development incentive agreement with New Belgium, whereby the City will make annual grants to New Belgium, based on the value of improvements and job creation.

Where such expenditures are proposed for economic development purposes, the law provides for a public hearing to be held upon 10 days notice. Council's rules (Rule 27) provide for certain public hearings to be organized by special order of the Council.

The resolution sets the public hearing on this matter for the regular Council meeting on June 12, 2012.

Adoption of the resolution setting the public hearing is recommended.

**RESOLUTION BOOK NO. 34 – PAGE 395**

**P. RESOLUTION NO. 12-123 – RESOLUTION AUTHORIZING EXECUTION OF AN EXTENSION OF TIME FOR FULFILLMENT OF CONDITION REGARDING PROPERTY ON BREVARD ROAD CONVEYED TO HENDERSON COUNTY**

Summary: The consideration of a resolution authorizing the execution of an extension of the time for fulfilling the condition on the Brevard Road property conveyed to Henderson County in 2002.

In 2002, the City conveyed 137 acres of land on Brevard Road (herein "Brevard Road Site") to Henderson County pursuant to the Water Agreement. The conveyance was subject to a condition that Henderson County either convey the property to MSD for waste water treatment purposes or to a regional water and sewer authority of which Asheville and Henderson County are members. This conveyance is to occur within 10 years of the date of the conveyance to Henderson County, and if it does not occur, the property will come back to the City. The 10 year period expires on July 15, 2012.

As Council knows, we have been engaged in negotiations with Henderson County for a number of years regarding continuation of water service following termination of the Water Agreement in 2005. The disposition of the Brevard Road Site continues to be a key point in those negotiations. As Council also knows, the report of the Water Study Committee to the Legislative Research Commission contains an expectation that the "interested governments" will engage in "good faith negotiations" regarding regional water and sewer issues. Extending the condition on the Brevard Road Property will enable the City and Henderson County to engage in further negotiations without the July 14 deadline looming, or the uncertainty of an informal agreement. The City Manager has contacted the Henderson County Manager regarding negotiations.

The Henderson County Attorney and I have worked out language for the extension. Authorization is requested to allow for the signing of an instrument to be recorded in the Buncombe County Register of Deeds to formalize the extension.

Adoption of the resolution is recommended.

**RESOLUTION BOOK NO. 34 – PAGE 401**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Smith moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. MANAGEMENT PLAN FOR THE POLICE PROPERTY EVIDENCE ROOM

Police Chief William Anderson said that it was his goal to manage the property and evidence room at the highest level of professionalism and accountability and to restore community trust in the police department's handling of evidence.

This management plan outlines current steps being taken by the Asheville Police Department regarding the active management of the property and evidence room. The identified steps have been vetted by the District Attorney and in no way impact the ongoing SBI investigation. We do not have a timeline as to when this investigation will be completed. The department is committed to moving forward with improvements in the process of handling evidence and will keep city officials and the public informed, recognizing the importance of restoring community trust.

Current operations will continue with the separation of the old and new property room. As part of the rebuilding process, several steps have been taken to work on restoring trust and accountability to the process of collecting and storing evidence and property by the Police Department. The department is ready to move forward with the hiring of a property room

manager and will continue to make improvements to the evidence room process that are above and beyond the requirements of the department's accrediting agency, CALEA.

Hiring of evidence room manager:

- Nationwide search, expected to take between 3-4 months
- Targeted recruitment will be done through the professional law enforcement organizations such as International Association of Chiefs of Police, the International Association of Property Managers and the North Carolina Association for Property Managers
- The successful candidate will:
    - Have an extensive background in inventory management and/or experience working in a law enforcement property/evidence room environment
- First priorities:
    - Review all policies and practices to ensure they meet or exceed industry standards.
    - Combine old and new evidence room

Improvements to evidence room process:

- New Building Security System
- Civilian staff will report directly to a sworn officer at the sergeant level
- Additional steps cannot be disclosed at this time as they relate to the on-going investigation

This is budgeted as part of the General Fund.

His overall goal is to get the evidence & property room back to operating at its highest level of professionalism and accountability, while at the same time determining who is criminally responsible and ensuring that they are prosecuted to the fullest extent of the law.

In response to Mayor Bellamy, Chief Anderson explained more about how the advertising will be conducted, noting they are also advertising locally and working through our Human Resources Department to select the best qualified candidate for the position.

Mayor Bellamy stressed the need to make sure the community is informed with factual information moving forward and to be as transparent as possible.

**B. QUARTERLY REPORTS**

**Public Safety Committee Chair Report**

Councilman Bothwell, Chairman of the Public Safety Committee, provided Council with a brief update on some major accomplishments during this quarter.

**Strategic Operating Plan**

A report submitted by Assistant City Manager Jeff Richardson was provided to Council on the quarterly updates on key strategic initiatives associated with the five focus areas of the City of Asheville's Strategic Plan. Staff has tracked departmental projects using performance indicators and measurements through quarter three. This report outlines key operational updates during the third quarter of the City of Asheville's fiscal year (January 2012- March 2012).

In addition, City Council has asked for an activity report on a quarterly basis of the Domestic Partner Registry. Since the Registry began on May 2, 2011, a total of 48 couples have registered.

Affordable

*Housing:* The Residences at Glenn Rock, a 22 unit mixed use development by Mountain Housing Opportunities, received $140,000 of the $2.2 million of federal CDBG and HOME funds approved by Council. Givens Park Apartments, a 240 unit affordable housing development for seniors has been approved and is in the process of submitting construction permits.

Fiscal Responsibility

- *Revenue Diversification:* City Council has adopted a new fee for electronic gaming operations with expected revenues to be approximately $200,000.

- *Information Technology:* As an ongoing effort to operate the City of Asheville to the highest levels of fiscal responsibility, Information Technology Services has enacted a number of changes that will result in notable savings, including:

| **Operational Change** | **Fiscal Impact** |
|---|---|
| Staff-written software interfaces (in-house work) | $31,000 |
| Remote access software changes | $9,000 |
| Mobile phone plan changes | $8,000 |
| AT&T billing changes | $5,500 |
| **Total Savings:** | **$53,500** |

Job Growth and Community Development

- *Support Diversified Job Growth and Business Development:*
    - New Belgium Brewing Company will invest $175 million over the next seven years, bringing 154 jobs on the site of the former WNC Livestock Market on Craven Street. Construction will not begin until early next year, but the renovation will support 1,252 jobs in construction over the next seven years, with an additional 260 jobs for industry vendors and suppliers. Hiring won't begin until the end of 2014, and production won't begin until the first quarter of 2015. The new jobs will pay an average $50,000 a year, exceeding the county's average wage by 43 percent.

- *Expand partnerships with UNC-Asheville, A-B Tech, Mars Hill College, Warren Wilson College and other institutions to achieve common goals including health and wellness, workforce development and sustainable Economic Development.*
    - The City of Asheville and UNCA continue to expand their partnership opportunities including moving the Health Adventure to 525 Broadway in a collaborative venture that included the Montford Neighborhood Association, TD Bank, and the City providing site development guidance. Future plans include cleaning up the property and holding a community work day.

Green and Sustainable

- *Implement Ways to Reduce Solid Waste:*
    - The Human Resources Department has implemented a new online recruitment system, replacing a completely paper-based process. Last fiscal year the department processed over 3,500 paper applications. This system makes it easier for applicants to apply for positions, stay informed about application

status, and be notified of future vacancies in an area of interest. In addition, this system will allow for increased reporting and measuring of recruitment efforts.

- The Human Resources Department's Health Services Division has implemented an electronic medical records system which will not only eliminate the paper associated with visits, but also allow for easier access, tracking and reporting of activities.

- *Set and develop a plan for implanting a community energy reduction goal:*
  - Transit decreased its fuel usage by 9.6% during the 3rd quarter of FY2011-12. There were 1,081,698 total riders from July 2010 through March 2011 and 1,131,658 from July 2011 through March 2012 which equates to 49, 960 more riders or an increase of 4.6%.

- *Identify strategies and costs for increasing the city's annual energy reduction goal to 4 percent.*

  - Phase 1 of city-wide LED street lighting replacement completed in FY 11. Phase 2 (in FY 12) will put the city at 39% complete. Despite rising electricity rates, the city is trending down in electricity spending.
  - Old, inefficient IT servers were exchanged for newer and more energy efficient servers that require less space and less cooling.

Safe

- *Implement strategies to significantly improve public safety in neighborhoods in Asheville with the highest levels of crime*
- *Continue efforts to eliminate open air drug markets in Asheville*
  - Federal funding for the West Riverside Weed & Seed initiative will end June 30, 2012, reflecting the end of 5-year grant period. Significant achievements include: improved place-based social programs that integrate community input and needs with services provided, updated community facilities in both the Burton Street neighborhood and Pisgah View Apartments, and an overall trend of decreased violent crime. Drug arrests have also decreased with no decrease in officer presence (e.g., when comparing 2008 to 2011, drug arrests decreased 29%)

- *Track and Monitor Performance of the Nuisance Court:*
  - There were 108 new Nuisance Court cases in the third quarter of the fiscal year and 1,670 community service hours completed an increase from the same time period last fiscal year; there were only 66 new Nuisance Court cases and 836.5 community service hours completed for the same time period. However, these numbers are a decrease in new Nuisance Court cases from the second quarter of our current fiscal year from 189 new cases and 3, 222 community service hours completed.

- *Monitor the "Changing Together" Initiative:*
  - Cross agency partnerships continue to be strengthened with an outcome of improved communication about the region's most violent offenders.
  - There were 19 offenders that were invited to the Focused Deterrence call-in held at AB-Tech on March 22, 2012; 13 offenders showed up and six stayed to discuss the program and their options with the service providers present. Since this call-in, four participants are currently receiving services and two participants have re-offended by being arrested on drug charges.

- *Support Recreation and Employment Alternatives for Youth At Risk of Gang Exposure:* This quarter 211 youth participated in gang prevention education programs housed at four schools.

- *Support the Safe Routes to School program by applying for funding for one school this year*
    - NCDOT has awarded a contract to build a sidewalk along US 70 (Tunnel Road) near Charles C. Bell Elementary School for a Safe Routes to School (SRTS) project. The estimated completion date is August 2012.

Multimodal Transportation

- *Pursue Pedestrian and Bike Friendly Community Opportunities:* Asheville has been designated as a Bicycle Friendly Community at the Bronze Level by the League of American Bicyclists. The League of American Bicyclists is an advocacy organization representing the interests of 57 million cyclists and promoting cycling in communities across the United States.

The purpose of this information is to update City Council on key operational initiatives that are in accordance with the Council's Strategic Operating Plan. No action by Council is necessary at this time. City staff will prepare and present a comprehensive year end Strategic Plan Close Out report this coming August 2012.

In response to Mayor Bellamy on the status of the Haywood Street property, City Manager Jackson said that City management staff is translating the direction from the Finance Committee and Council into a contract for purchase. Those documents will be exchanged between City staff and McKibbon Hotel Group and then scheduled for Council action. Staff also has direction from the Finance Committee to insert into the process an opportunity for the Asheville Design Center to facilitate a review of design in such a way that both the City and the Basilica get the highest and best use of the property.

City Attorney Oast noted that there is a requirement for a public hearing to be held prior to signing a contract.

**Financial Report**

Budget Manager Tony McDowell provided Council with the following financial information which reflects the City's overall financial position for the fiscal year through March 2012.

***Amendments.*** The General Fund budget presented in the third quarter report reflects: (1) the adopted budget of $87,645,955; (2) a technical amendment adjusting the fleet external charge budget, and; (3) ten budget amendments totaling $746,363. The only amendment which involved an appropriation from fund balance was funding for the demolition of private property that had become unsafe; and it is anticipated that the city will reimbursed the cost of the demolitions in future fiscal years through proceeds received from the lien on the property.

| | |
|---|---|
| Adopted Budget | 87,645,955 |
| Fleet Technical Change | (1,221,594) |
| Budget Amendments: | |
| NCDENR Park Recycling Bin Grant | 30,000 |
| NC Arts Council Grassroots Arts Grant | 49,850 |
| Buncombe County/Changing Together Partnership | 63,000 |
| Debt-Funded Purchase of Computer Equipment | 350,000 |
| State Haz-Mat Grant | 25,000 |
| Federal COPS Hiring Grant | 118,543 |
| State Senior Opp. Center/Harvest House Grants | 24,410 |

| | |
|---|---|
| Mill Creek Condo Project | 38,207 |
| Hanging Basket Program | 2,353 |
| Demolition Funding | 45,000 |
| 3/31/2012 Budget | $87,170,724 |

***Revenues.*** Through March 31, 2012, the City has collected $72,808,671 in General Fund revenue, which represents approximately 83.6% of the total General Fund revenue budget. Revenue collections through the first nine months of the previous fiscal year were at 81% of budget, so collections this year are slightly ahead of where they were one year ago. The City has received nine months of sales tax revenue, and collections are up 9.3% compared to the prior year. Sales tax revenue is now projected to exceed budget by $575,000. State utility tax revenue (Intergovernmental category) continues to lag behind budget primarily due to the warmer than normal winter, which depressed natural gas and electricity usage. Overall, staff is currently estimating that ***total FY 2011-12 General Fund revenue will come in under budget by $475,000 or 0.55%.***

***Expenditures.*** General Fund expenditures through March 31, 2012 total $59,461,913 or 68.2% of the budget. One year ago expenses were at 68.4% of budget at this same point in the fiscal year. While fuel prices have fallen slightly from their peak, expenses for fuel and fleet maintenance are still expected to exceed budget by approximately $600,000 in the current year. As reported in the second quarter report, Fire Department overtime expenses also continue running ahead of budget. As evidenced by the overall General Fund expenditure percentage through the first three quarters, savings in other areas of the budget, such as full time salaries and utilities, are offsetting the over expenditures in fuel and fire overtime. Staff also continues to seek opportunities to generate additional savings by closely monitoring expenses, closing old purchase orders and contracts, and by maximizing efficiency in operations. ***Staff anticipates being able to generate the necessary expenditure savings to more than offset the minor revenue shortfall.***

***Fund Balance.*** The City ended FY 2010-11 with available fund balance of $13.18 million, which equated to 15.2% of FY 2010-11 expenditures. ***Based on current revenue and expenditure estimates, FY 2011-12 available fund balance is expected to increase slightly to 15.6%.***

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING ON THE FISCAL YEAR 2012-13 ANNUAL OPERATING BUDGET

Director of Administrative Services Lauren Bradley said that the City Council conducts a public hearing each year to receive public input on the Proposed Annual Operating Budget before the Annual Budget Ordinance is adopted.

Fiscal 2012/2013 Proposed Annual Operating Budget was presented to City Council on April 24, 2012. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Proposed Budget along with a notice of the Public Hearing was published on May 11 and May 18, 2012. Adoption of the Fiscal 2012/2013 Budget Ordinance is scheduled for June 12, 2012, at the regularly scheduled City Council meeting.

The Fiscal Year 2012/2013 Proposed Budget is balanced with an Ad Valorem tax rate of $0.42 per $100 of assessed value, which represents no change from the current year tax rate. All essential City services are continued in the Proposed Budget. A copy of the Proposed Budget is available for public inspection in the City Clerk's office. Also, the Proposed Budget is available for viewing on the City's website (www.ashevillenc.gov). In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the Proposed Budget may be changed by City

Council in any way before adoption. It may also be changed by budget amendment after adoption, with the only exception being the Ad Valorem Tax rate, which cannot be changed once the Budget is adopted.

The item of employee compensation has been raised so she briefly walked Council through the process to date. We entered this year, after 3 years of very difficult economic conditions and tough decisions, through the City's priority to avoid significant reductions in the workforce and maintain the tax rate. Unfortunately, based on those decisions were we required to defer adjustments to employees' salaries for three years. Fortunately in the coming year we are projecting that the City will see some modest revenue growth, mostly thorough growth and sales tax revenues. As we worked through the budget worksession process there were two expenditure areas that were unavoidable – rise of fuel costs and fire overtime (which resulted in hiring 9 new firefighters). After those unavoidable expenditures, there was approximately $500,000 of discretionary funds. Council agreed with City management that employee compensation needed to be the number 1 priority with those discretionary funds. In the General Fund a 1% cost of living adjustment is approximately $460,000. To reach that beyond $460,000 would mean that they would have to consider some other opportunities for funding employee compensation, which would require either additional revenue (in the form of a tax rate increase), or a reduction in other expenditure areas or capital. Council directed staff that through the next several months as we close out the current fiscal year to look for opportunities to either provide for a one-time bonus or recurring salary adjustment for employees based on better than budget performance in the current year. In August the City will receive their sales tax information about the current year. If we have better than budget performance in what we are currently projecting, there might be a recurring source of revenue that could be built into next year's budget that would provide an opportunity for recurring employee compensation. Also, in August we will be at a point where we will have bid out all of our major capital projects in the current year, so that if there are savings Council can make a comprehensive strategic decision about those funds at that time. In November they will have the annual audit which shows how the City ended the year in unassigned Fund Balance. We are currently projecting that we will end the year with revenues over expenditures around $300,000, which would take us from a Fund Balance level of 15.2% to 15.6%. If sales tax revenues improve through the end of the year, that number might be better. We are optimistic that we will see some positive growth. By the time Council receives the audit by the end of November, they will have an idea of where we landed on unassigned Fund Balance and can make a decision about one-time revenues, so if Council is interested in doing some kind of one-time compensation at the end of the year, we would know by that point. The discussion about employee compensation or other priority areas for City Council doesn't have to end with adoption of the budget. There is a process we will move through based on budget performance and revenue performance where Council can make additional decisions through the year to address employee compensation. We did hear from Council that employee compensation was their highest priority. At this point, we are confident that we can afford a 1% cost of living adjustment in the upcoming fiscal year based on their current projections, but that we are hopeful that those projections might improve through the end of the fiscal year.

Staff recommends City Council conduct the public hearing on the City of Asheville Fiscal Year 2012/2013 Proposed Annual Operating Budget and include public input in its consideration of the Budget.

Mayor Bellamy opened the public hearing at 5:45 p.m.

Sgt. Rondell Lance, President of the local Fraternal Order of Police representing the men and women of the Asheville Police Department and their families, said that over three years ago employees were told that due to economic issues and the effect that the economy had on the finances of the City, the employees would not be receiving a raise. The employees understood the decision. For three years they did their part to help the City. They did not come before Council to raise issues with that decision. The employees continued to do their job in a professional manner with energy and dedication. The employees handled many events, some

being Moogest, Bele Chere, Presidential candidates visits, President Obama's visit to Asheville, basketball tournaments and protests. From the Street Division to Parks & Rec and other departments in the City, the reputation and greatness of the City of Asheville continued to be evident at these events, without any reduction in dedication to the City. We, as employees, believe in the City and are dedicated to the City and that's why we feel we have done our part in the last three years to help ease the City's burden of their financial difficulties. Police officers have worked without overtime (due to City sponsorship) and have had to flex out the time over the week or use it as compensatory time. Police officers also have to work 6 hours over as straight time before overtime and straight time on Christmas day. The City Manager told him that the last thing he would do as City Manager would be to balance the budget on the back of City employees. But after three years of balancing the budget on the back of the employees, we now feel it's time to find a way to give all employees a 4% raise. One of the main reasons Asheville is a great City is because of the dedication of their employees. Every day tireless efforts are made by employees to implement the goals and desires of Council, as well as keeping Asheville the premier City it is. Departments work together and employees go beyond their normal duties to make sure we maintain the City's reputation. The best investment the City can make in their budget is to invest in the City employees. The return of that investment will be felt all over the City – they eat in City restaurants, bring our families to the City, attend the many events in the City, shop at the malls, etc. They invest back into the City with not only dedication to the City, but also in monetary ways. He urged Council to invest in their employees. They don't feel a 4% raise for all employees is unfair. Employees need to be treated with respect and compensated for their service.

Mr. Doug Williams, member of the Board of Directors and Past President of the Friend of the WNC Nature Center, explained how the Nature Center is the City's most popular park facility. He expressed concern that their budget in the past three years has been reduced by more than 7%, along with reduction in staffing. They are concerned about the Nature Center's ability to maintain its current level excellent level of care for the animals and to provide educational programs for visitors and school groups.

Mr. Scott Mullins, President of the Firefighters Association, said that in the City's budget is a small token of appreciation – a 1% wage increase. Although we appreciate the thought, it is once again a step backwards. We have gone three years without a raise, which insurance and the inflation rate continues to increase. More money is going out of their pockets than going in. We are asking Council to get creative with the budget and find a way to put more money in the pockets of the men and women that people call on their worst day. They are the professionals that make the Fire Department one of the best in the state and the reason why so many residents choose to retire here. During the last three years, with no wage increase, the City was being called one of the best places to retire. Many Fire Department employees are hurting financially. The 1% increase means about $5 more a week for a new employee and his/her family. This is not nearly enough to help firefighters and other City employees who are struggling to get off the government assistance programs that they are currently on. It is not enough of an increase to help a firefighter purchase a home in the City that they proudly serve. Four-percent is a raise. They are not advocating that the City raise taxes or cut employees to give the raise. The City operates with a General Fund Balance of 15.2%. The State of North Carolina recognizes an 8% minimum. We believe it's time for a policy change. We ask that the City put less in the General Fund Balance and put it in the pockets in the hard working men and women to help Asheville the great City it is today. We understand the City has had to make some tough choices over the last three years and will be faced with hard decisions with this year's budget as well. Our firefighter families are no different. We've had to decide not to let our children participate in sports or attend camp simply because they could not afford it. Many firefighters have had to work overtime or work a second job to allow our children to do the things that so many take for granted. Asheville is a great place to work but please don't balance the budget on the backs of the employees.

Mr. Harry Carlyle, Asheville resident, spoke in support of more than a token 1% raise for City employees.

Ms. Holly Stiles, member of the Friends of the Nature Center, urged Council not to reduce the WNC Nature Center budget any further.

A firefighter spoke about the great City Asheville is and urged Council to increase the salaries of employees.

At 6:01 p.m., Mayor Bellamy closed the public hearing.

Mayor Bellamy said that this is the first public opportunity for her to talk about the City's budget. She agrees that we need to find additional funding for our City employees. She didn't like it last year when there was no increase and she doesn't like the 1%. She did not feel it was appropriate to wait until August. Going back to the financial investments policy approved last year where it said anything over 15% should be used for capital – she knew this day would come when we would have needs beyond capital, and this is the time. She felt that anything over 15% should be used for operations. She also believed that we should decrease our capital expenses by $1 million. Our employees are the backbone of our organization and earlier at this meeting she proclaimed National Public Works Week and stated how important they are to our City and still only a 1% raise. She believes we need to find the money. She offered the following suggestions: (1) we have used our Parking Fund for transit for the last few years and it has done a wonderful job; (2) we are accelerating our payback back for our bonds for our parking deck – maybe we shouldn't be as aggressive to pay it back and use some of that money for streets, and the money that would have been used for streets, put towards operations; or (3) reduce how much we are looking to invest in our debt service for the bond package we are about to go after – the cost for construction might to be a lot lower than anticipated even after we put the 25% in for cost overruns. She believed we need to find the money for more than 1%.

Councilman Bothwell was uncomfortable giving differential raises, as much as he values firefighters and police. The police and fire employees are organized in a way that other employees are not. He could support a 1.5-cent increase in property taxes which would cover a 4% raise for all City employees.

Councilman Pelly said as a new Council member it has been an eye-opener to try and balance the competing demands for the City. We have the 1% already in the budget and he's heard other options tonight, including (1) that some projects may be coming in under budget; (2) sales tax revenues may be larger than we anticipate; and (3) possibly holding the General Fund Fund Balance to 15%. Those are all possibilities. He was committed to trying to find a way to get as close to 4% as possible.

Councilman Hunt appreciated the work that firefighters and police provide the community. He agreed that the 1% increase is insufficient after 4 years. He talked about the process and challenges Council faces in trying to formulate an overall budget. The budget was presented at the April 24 Council meeting, the Finance Committee has met three times to discuss the budget and there has been two full Council budget worksessions. There are trade-offs that we wrestle with, including trying to get the Housing Trust Fund up to its original funding; transit, and several outside agencies that we have to cut funding. On the capital side, we have to make investments as well and not making them pushes those capital needs out into the future. He suggested to the City Manager that perhaps staff could provide a briefing for employees and the public so everyone could get a greater sense about those trade-offs. Council is very committed to public safety as seen in Council's strategic goals to have Asheville a safe city. Despite Council not improving compensation at the rate he would like, we have honored the commitment to improve public safety by adding 23 full-time jobs over the past five years and at the same time reduced all other departments by 34 jobs, through attrition. Given the interest of Council looking at this further, there may be avenues where we have other compensation discussion going further.

Vice-Mayor Manheimer said that Council is trying to balance all the different values our community has stressing that we place a high value on our public safety employees. When we learned at the budget worksession that there was some revenue to work with this year, the City Manager and Ms. Bradley put before Council a long list of things that needed funding. Council immediately pulled out employee pay raises as the item they wanted to fund, which basically took up all of the revenue we had to work with this year. Council values their employees. When we had these budget discussions, part of that discussion was we felt we were making some safe and conservative revenue estimates for this year and knowing that, we quickly decided that we would revisit our budget situation in August when we had firmer numbers on sales tax revenues. At that time we would be in a position to make a decision about additional one-time bonus pay increase, or a recurring pay increase. We will also have more numbers in November for a better outlook. The intent is to look at this again and hopefully be in a position to offer some additional revenues. She also owns a business and struggles with making sure they pay their employees a fair wage. She noted the unique situation Asheville is in opposed to all other cities across North Carolina – and that is, the higher call volume (50,000 additional calls) for emergency response needs from the people that come into our City every day. City taxpayers have to pay for those services. We have a high level of need, but a finite base to pay for it. We have heard that people don't want their taxes increased. This budget does not increase taxes, nor does it increase residential water rates.

Councilman Smith thanked the public service employees for the service they give the City, the excellence each pursues and professionalism with which they always conduct themselves. He agreed that we are not doing as much as we need to do regarding employee compensation. He would like to see us look at benchmark cities of similar size in the state to make sure we at least get to the average for public safety employees. That being said, thing are only now being beginning to stabilize after years of recession. Council has to be prudent and responsible to guarantee that this city continues to grow in a safe way so we can guarantee future revenues and get back to doing a cost of living adjustment every year. Asheville has restrictions preventing us from being as creative as we would like with raising revenue, e.g., difficulty in annexation; limits on our occupancy tax; high day call volume, etc. We are advocating for those revenues on a state level. He hoped to see later this year if the General Fund Fund Balance gets to 15.6% and if sales tax numbers rise, he would support giving employees more than 1%. He does not feel comfortable spending money that we don't have yet. He would be willing to take the General Fund Fund Balance to 15% once we know where it stands later in the year. He noted that the state is proposing a 15% cut in the transit budget state-wide so when we are looking at where money might come from to augment, we also have to protect some of the core services the City delivers. Perhaps the Finance Committee would be willing to begin working on a multi-year plan to get us to the state averages.

Councilman Davis hoped we could have offered raises more than 1%, reiterating that we may be able to offer a one-time bonus when more firm figures come in, nothing that he is not a fan of one-time bonuses. He could support going back to the table and trying to be creative to get as close to 4% as possible. He is not advocating a tax increase, but sometimes if the community wants high standards, they have to pay a little more. He agreed the raises should be more than 1%. When also noted that when we lose our employees to competing areas, it is very expensive to train new firefighters and police officers.

Councilman Bothwell pointed out that a 7-cent increase is being advocated for the Business Improvement District. To him, 1-cent increase on the property tax isn't off the table. Asheville is being compressed by our lack of being able to annex so we can't grow into getting a bigger tax base.

Mayor Bellamy supported deferring some capital investments. We have had employee health insurance increases, cost of living increases, but no increases for our employees. Our employees are taking home less today than three years ago. Budgets are based upon Council's priorities and if this is a priority of Council, then four votes can make it happen. Council members

are the policy makers and we should not leave it up to the employees to find the trade-offs. It may mean deferred new vehicles or perhaps a fixed roof and not a new one. It's time we invest in people, since we have invested in buildings, cars, greenways, transit, etc. It is time for Council to step up and make an investment in our employees. Mayor Bellamy supported a 4% increase before August.

Mayor Bellamy supported putting a 4% employee pay raises in the budget now and asking the City Manager to find the funds (capital needs on the table) and then in August when more firm numbers come in, put that money towards capital needs.

Councilman Hunt said that since we are late in the budget process, he was not ready to say how the budget might be reframed. It's clear there is interest amongst Council to look closely at employee raises. He suggested the Mayor work with the City Manager to come up with a process to where perhaps there be another Finance Committee meeting or another budget worksession to understand what the trade-offs would be.

Mayor Bellamy noted she did not support the budget last year because there were no employee raises. She stated in Council's retreat how important it was for employees to get a raise and she has stated to staff repeatedly how the employee raises should be more than 1%. Again, if this is a priority for Council, Council can make it happen. She could name things that have been a priority to Council that have made it through the budget process, even though the budget was tight. It will cost us more if our employees decide to strike or train new ones. We have invested where we wanted, and now we need to invest in the people who have made our community great. We wanted a One Stop Shop and the employees made it work; some employees work 4 10-hour days; there has been a decrease of employees but raise in customer service; and we cut staff in Parks & Recreation but still maintain programs for our youth. We are doing more with less employees.

Councilman Pelly confirmed that the current budget has a 1% increase for employee raises. He then moved to increase the property tax rate by 1-cent with those funds being dedicated to employee pay raises (for a total pay raise of 3%). This motion was seconded by Councilman Davis.

City Attorney Oast clarified that Council is not actually raising the tax rate, but giving direction to staff to come back with a budget that incorporates a 1-cent tax increase, with a 3% increase for employee salaries.

Mr. Tracey DeBruhl felt that there are several employees with base salaries that are too high. He felt we should bring those in line with the people that they are actually working with.

Ms. Judy Strong was opposed to spending money to support McCormick Field and the Golf Course which both do not support the community. To ask the community to support that funding and then increase property taxes by 1-cent is wrong.

Rev. Christopher Chiaronmonte supported an employee pay raise, but not funding it with a tax increase.

Councilman Hunt suggested that there have been several ideas floating around about how to retool the budget to have a more suitable pay increase for employees, but without having the context of understanding all the options and trade-offs, committing to a 1-cent property tax increase is not the best way to approach it. He appealed to Council that they deliberate in a more careful way, making sure the budget is adopted before July 1.

Councilman Davis reconsidered his second and withdrew it, believing that the Finance Committee and City staff have heard Council's wishes.

Councilman Bothwell then seconded Councilman Pelly's motion.

Councilman Smith felt it is Council's responsibility to deliberate and supported employee pay raises be reviewed again by the Finance Committee.

Vice-Mayor Manheimer, Chair of the Finance Committee, said they will take up the issue of employee pay, perhaps with a multi-term year plan to get us to the state averages as suggested by Councilman Smith. City staff is very talented to pull something together to consider that will bring us in line with other cities. She felt it was unfair to increase property taxes when the public was not aware that item was going to be discussed.

The motion made by Councilman Pelly and seconded by Councilman Bothwell failed on a 3-4 vote, with Vice-Mayor Manheimer, Councilman Davis, Councilman Hunt and Councilman Smith voting "no."

Mayor Bellamy hoped the Finance Committee consider that City staff should not wait until after July 1 to know if they are going to get more than a 1% raise.

Councilman Hunt suggested Vice-Mayor Manheimer and Mayor Bellamy meet with City Manager Jackson and come up with a schedule that gets us to adopt the budget by June 30, where we build in opportunities for a Finance Committee meeting and a Council worksession.

Mayor Bellamy doesn't think we need another worksession to just talk about the process. Is the goal to give the employees more than a 1% raise?

Councilman Hunt noted that under any scenario, no raise would go into effect until July 1 and deciding how much now is much less important than doing it property and thoroughly. He felt we need to be deliberative, balance all the trade-offs, and come to a unified decision.

Vice-Mayor Manheimer suggested said that through our budget worksessions we have been understanding the trade-offs from 1%, 2% or 3% increases. The City Manager can have the menu in front of Council and then Council can make those hard decisions. She needs to understand the ramifications of where the money will come from and what the trade-offs will be before she can support more than a 1% increase.

Mayor Bellamy said that she would meet with Vice-Mayor Manheimer and City Manager Jackson to talk about a process by which we can lay these things out for discussion and consideration and see if the majority of Council can support a higher raise for our employees.

**B. PUBLIC HEARING TO CONSIDER THE PERMANENT CLOSING OF A PORTION OF VICTORIA ROAD**

**RESOLUTION NO. 12-119 - RESOLUTION TO PERMANENTLY CLOSE A PORTION OF VICTORIA ROAD**

Assistant Public Works Director David Foster said that this is the consideration of a resolution to permanently close a portion of Victoria Road. This public hearing was advertised on April 27, May 4, 11 and 18, 2012.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjacent property owner Mission Hospital Inc. and Aycock Jr. and Owen E. et al William R has requested the City of Asheville to permanently close a portion of Victoria Road.

The Greenway Commission met on April 12, 2012, and approved the closure unanimously.

This closure allows for maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution to permanently close a portion of Victoria Road.

Mayor Bellamy opened the public hearing at 6:53 p.m., and when no one spoke, she closed the public hearing at 6:53 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 12-119. This motion was seconded by Councilman Pelly and carried unanimously.

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**C. PUBLIC HEARING TO CONSIDER THE PERMANENT CLOSING OF AN UNNAMED ALLEY IN BILTMORE VILLAGE**

**RESOLUTION NO. 12-120 - RESOLUTION TO PERMANENTLY CLOSE AN UNNAMED ALLEY IN BILTMORE VILLAGE**

Assistant Public Works Director David Foster said that this is the consideration of a resolution to permanently close an unnamed alley in Biltmore Village. This public hearing was advertised on April 27, May 4, 11 and 18, 2012.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjacent property owners John William Bell Jr., Janis E. Bell, and Wachovia Bank and Trust Company have requested the City of Asheville to permanently close an unnamed alley in Biltmore Village.

The Greenway Commission met on April 12, 2012, and approved the closure unanimously.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution to permanently close an unnamed alley in Biltmore Village.

Mayor Bellamy opened the public hearing at 6:57 p.m.

Mr. Lou Bissette, representing the petitioners, said the idea is to improve the backs of the buildings.

Mayor Bellamy closed the public hearing at 6:58 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 12-120. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 34– PAGE 398**

**D. PUBLIC HEARING TO CONSIDER REZONING 7 ROBERTS STREET FROM COMMERCIAL INDUSTRIAL DISTRICT TO URBAN PLACE DISTRICT**

**ORDINANCE NO. 4084 - ORDINANCE TO REZONE 7 ROBERTS STREET FROM COMMERCIAL INDUSTRIAL DISTRICT TO URBAN PLACE DISTRICT**

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance to rezone 7 Roberts Street from Commercial Industrial District to Urban Place District. This public hearing was advertised on May 11 and 18, 2012.

Ms. Tuch said in late 2006 and early 2007, a number of properties were rezoned to Urban Place in an effort to support the Wilma Dykeman Riverway Master Plan. The area to the north, west, and south of the subject site constituted a part of that rezoning. This particular property was sought for inclusion in the rezoning at that time, but omitted because the property owners could not be reached to confirm their consent.

Subsequently, in recent months, the property was sold in a Buncombe County tax auction to one of the owners of the adjacent property already zoned Urban Place. The proposed rezoning would close the awkward gap and create a more consistent and orderly zoning pattern in the area.

At their May 2 meeting, the Planning and Zoning Commission voted unanimously (7-0) to recommend approval of the rezoning. One neighboring property owner spoke at the public hearing seeking confirmation that it would not affect his zoning.

Prior to the Planning and Zoning Commission meeting, staff received one communication from another neighbor seeking clarification. Staff has received no other communication from the public regarding this petition.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Would resolve a problematic gap in the existing zoning district.
- Could encourage mixed use, high-density infill development.

Con:

- None noted.

While the diminutive subject site, at less than 2,000 square feet, does not hold any great development potential by itself, this rezoning promises to fill in a "missing piece" of a significant larger site, and staff feels it would undeniably yield an improvement over the existing situation.

Mayor Bellamy opened the public hearing at 7:00 p.m., and when no one spoke, she closed the public hearing at 7:00 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hunt found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4084. This motion was seconded by Councilman Smith and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 369**

**E. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO REMOVE STANDARDS ALLOWING DIGITAL BILLBOARDS**

**ORDINANCE NO. 4085 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REMOVE STANDARDS ALLOWING DIGITAL BILLBOARDS**

Assistant Director of Planning & Development Shannon Tuch said that this is the consideration of an ordinance amending the Unified Development Ordinance to remove standards allowing digital billboards. If adopted, existing DBBs will become legal non-conforming signs. No new DBBs could be added to the inventory. This public hearing was advertised on May 11 and 18, 2012.

Standards allowing digital billboards were adopted in 2008 after extensive public discussion – there have been eight digital billboards installed since the adoption of these standards and approximately 45 billboards removed, as required by the digital billboards standards (3 times the square footage of static for every digital). A more recently installed digital billboard on Merrimon Ave. has prompted substantial discussion in the community regarding appropriateness and compatibility of this new technology, especially along certain narrower corridors. After significant public discussion and staff analysis, the Planning & Zoning Commission recommended amending the ordinance to address specific concerns that arose with the Merrimon Ave. billboard, but also made a recommendation that staff continue to research the topic and develop a stronger set of standards overall.

This recommendation was forwarded to the Asheville City Council on March 26, 2012, where the Council unanimously voted to adopt the proposed wording amendment. The Council, however, also made a second motion instructing planning staff to return with a follow-up amendment that removes the option for DBBs altogether. This motion passed unanimously. The ordinance reflecting that direction, if adopted, would prohibit any new DBBs from being installed within the city's jurisdiction and would render all existing DBBs non-conforming. Since these existing DBBs were established legally, they will be "grandfathered" and will be allowed to remain

in place and maintained; however, these boards will not be able to be replaced or relocated - including the Merrimon Avenue DBB.

The subject of DBBs was reviewed by the Planning & Zoning Commission on several occasions (December 7, 2011, January 4, 2012, and February 1, 2012) where there was significant public discussion and deliberation (see above).

The most recent discussion occurred on May 2, 2012, by the Planning & Zoning Commission where the City Council directed amendment that proposed to remove standards allowing DBBs was discussed and approved 4:2 (Brooks recused).

This proposal does not directly relate to the goals outlined in the Strategic Operating Plan.

This proposal is; however, supported by the City's comprehensive plan where the *Implementation Matrix* states in the *Land Use and Transportation* section: **Goal I**. The design of streets and highways should be consistent with the economic goals of the City of Asheville and should be compatible with the physical character of the community. And strategy 6 under this goal states: **Strategy 6.** New billboards should not be allowed along any road corridors and existing ones should be amortized and removed unless adjacent to federal aid primary highways. The ability of local governments to require amortization of outdoor advertising was significantly limited by the enactment in 2004 of NCGS 160A-199, "Regulation of outdoor advertising signs". In absence of the ability to amortize, this action would support the intent of this goal.

Pros:

- Addresses compatibility and safety concerns from residents and motorists.
- Allows existing boards to remain in place.

Con:

- Renders existing digital billboards non-conforming with no opportunity for replacement or relocation.

No direct fiscal impact.

The proposed wording amendment reflects the Council's direction to remove the potential for any further digital billboards within the City of Asheville.

Ms. Tuch said that yesterday the received an application from Lamar Outdoor Advertising that proposes to relocate one of their existing digital billboards on Hendersonville Road by Applebees further north on Hendersonville Road. Staff will review and process the request. However, should this amendment pass, any future relocation or replacement applications will be denied.

Mayor Bellamy opened the public hearing at 7:03 p.m.

Mr. Tracey DeBruhl was concerned that if Council did not let billboards be replaced, it will be less of that industry for the smaller companies.

Mr. Tyler Martin urged Council so support this amendment and looked forward to staff working on relating the Merrimon Avenue digital billboard.

Mayor Bellamy closed the public hearing at 7:08 p.m.

In response to Councilman Smith about the digital billboard on Merrimon Avenue, City Attorney Oast said that we can no longer adopt ordinances that require the amortization of billboards without compensating for it. What Council is doing with adoption of this ordinance

doesn't close out the possibility of working out a relocation for that particular digital billboard. He and Ms. Tuch met last week with a representative of Fairway Outdoor Advertising to talk about ways to address relocation.

Councilman Davis said that the representative of Fairway Outdoor Advertising has made a good effort to get to this point. Regrettably, there was not a lot of willingness with the neighborhood to help with that process. He hoped we will continue to look at getting to a better place.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hunt found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4085. This motion was seconded by Councilman Pelly and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 370**

**F. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE APPROVED CONDITIONAL ZONING MASTER PLAN FOR HUNT HILL APARTMENTS, LOCATED AT 56 HUNT HILL PLACE WITH A MODIFICATION REQUEST**

At the developer's request, Councilman Hunt moved to continue this public hearing until June 12, 2012. This motion was seconded by Councilman Pelly and carried unanimously.

**G. PUBLIC HEARING TO CONSIDER THE REZONING OF AN AREA IN THE VICINITY OF 55 HUNT HILL PLACE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING TO INSTITUTAL DISTRICT**

At the developer's request, Councilman Hunt moved to continue this public hearing until June 12, 2012. This motion was seconded by Councilman Pelly and carried unanimously.

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 12-121 - RESOLUTION AUTHORIZING APPROVAL OF THE 2013 OUTSIDE AGENCY GRANTS**

Planning & Development Director Judy Daniel said that this is the consideration of a resolution approving of the recommendations of the Housing & Community Development (HCD) Committee for the 2013 Outside Agency Program.

The HCD Committee received applications from 17 eligible organizations for Outside Agency funding for 2013. The Committee considered these applications at their meeting of May 10, 2012, and now recommends 13 applications for funding. The recommendations are:

| Outside Agency | Funding Support Purpose | 2013 Recommended Funding |
|---|---|---|

| | | |
|---|---|---|
| Asheville Area Chamber of Commerce-Economic Development Coalition | Create jobs for the citizens of the Asheville area by attracting companies, creating companies, retaining companies and expanding companies. | $ 60,000 |
| Asheville Buncombe Community Relations Council | Outreach, advocacy, referral and training for Fair Housing and Employment Discrimination; training for area agencies on Diversity/Inclusion; conduct community conflict resolution, and acts as a community relations agent. | $ 35,000 |
| Asheville Buncombe Regional Sports Commission | Identify and attract sports events and related meetings to enhance the health, wellness and quality of life for area residents and sports enthusiasts and generate a positive economic impact by promoting our region as a recognized sporting destination. | $ 45,000 |
| Asheville Design Center | Small Business Assessment Pilot Program in cooperation with COA's Community Development, Economic Development and Development Services Departments. | $ 4,000 |
| Asheville Greenworks | Act as a liaison between city, other governments and community agencies and citizens to improve the environment. Serve every citizen and visitor in Asheville by cleaning up litter, reducing graffiti, recycle and reduce waste, and beautify with tree plantings, park restorations and flower beds. | $ 8,000 |
| Child Abuse Prevention Services, Inc. | Reduce/prevent child abuse, strengthen families, and assist children and families who have experienced abuse through prevention education, parenting education, and crisis intervention/counseling. | $ 5,000 |
| Children First /Communities in Schools | Project MARCH: after-school safe-haven program at three housing complexes in the City | $ 15,740 |
| Green Opportunities | GO Kitchen Ready program to prepare participants for jobs in Asheville restaurant and hospitality industry. | $ 25,000 |
| Homeward Bound of Asheville-AHOPE | Outreach, intake and support for homeless persons, support for weekend operations. | $ 20,000 |
| Housing Authority-Youthful HAND | Afterschool Program serves 30 children who reside in the Lee Walker Heights (LWH) housing development. The children are in grades K-8. | $ 4,720 |
| One Youth at a Time | Provide mentoring/tutoring, guided growth activities, job training and placement assistance to at-risk and critically at-risk youth ages 8-19. | $ 5,440 |

| | | |
|---|---|---|
| United Way 2-1-1 | 2-1-1 is a community service information line that connects people to community resources. It is a free confidential service available by phone 24/7 to speakers of all languages. Its database of public and non-profit services is also available online and via mobile devices. | $ 2,500 |
| YWCA of Asheville and WNC | MotherLove is a comprehensive program for pregnant and parenting teens, the overarching goal of which is to move these teens to graduation and higher education. | $ 8,000 |
| TOTAL | | $ 238,400 |

This action complies with the City Council Strategic Operating Plan in (1) Affordable, buy supporting initiatives to end homelessness; (2) Safe, by supporting recreation and employment alternatives for youth at risk of gang exposure; (3) Job Growth and Community development, by continuing to support the Economic Development Coalition; and by considering tools and programs the City can use to promote job growth and creation.

Pros:

- Approval of Outside Agency Grants provides operating support to Asheville- based organizations that are providing direct services for Asheville residents.
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee.

Con:

- Budget constraints continue to curtail the availability of funds; supported organizations will need to find alternate sources of program support. All worthy proposals could not be funded.

Outside Agency Grants are funded from the City's general fund. The funding recommendations exceed the fiscal limits included in the FY 2012-2013 Proposed Budget by $5,000. Staff suggests that this additional funding recommendation can be met through anticipated electronic gaming revenues. With City Council's approval, this modification will be included in the FY 2012-2013 Adopted Budget.

The HCD recommends approval of the 2013 Outside Agency Program grants as presented.

Brother Christopher Chiaronmonte questioned Council felt that instead of providing money to outside agencies, Council should put those funds towards employee wages.

Mr. Tracey DeBruhl felt that these outside agencies should try to raise the funds needed through fund-raising measures.

Councilman Davis, Chairman of the HCD Committee, said that these agencies come to the table with more funding requests than the City can help with. The 60,000 for the Economic Development Coalition, along with a much larger amount from Buncombe County, goes toward economic development and attracting jobs to our area. He also noted that the Sports Commission is a very important partnership that has leveraged many, many dollars to this community. These all come with partnership dollars brought to the table, not just agencies reaching out for funds.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 12-121. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 399**

**B. RESOLUTION NO. 12-122 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PERMANENT LENDER LETTER OF INTENT TO PROVIDE FINANCING TO EAGLE MARKET STREETS DEVELOPMENT CORPORATION**

Staff Report - The consideration of a resolution authorizing the City Manager to execute a letter of intent to provide permanent financing in the amount of $1 million to Eagle Market Streets Development Corporation ("the developer") for the project known as Eagle Market Place, and direction to the City Manager to pursue a HUD Section 108 loan to fund the developer's loan request.

Staff has reviewed a request from Eagle Market Streets Development Corporation for permanent financing in the amount of $1 million for the Eagle Market Place project. The development corporation is presenting its request to City Council along with information about how the loan proceeds would be used in the overall project on May 22, 2012. That request is outlined in more detail in separate documents provided by the developer.

The purpose of this staff report is to provide analysis on a recommended funding source for the requested loan should City Council wish to approve the request.

**HUD Section 108 Loan Program**

The HUD Section 108 Loan Program is an available finance resource for the Eagle Market Place project. **The Section 108 funds would be provided by HUD as a loan to the City.**

Section 108 allows eligible HUD CDBG grantees to borrow funds from future CDBG allocations to finance projects. A grantee may borrow up to five times their current year allocation. With an allocation this year of $950,000, the City of Asheville has the authority to borrow up to a maximum of approximately $4.75 million. The City has an existing loan of $750,000, leaving about $4 million in borrowing capacity. Although the City must apply for the funds, Section 108 is a non-competitive program.

The use and administration of these funds is tied to the regulations of the HUD Community Development Block Grant (CDBG) program. As with the CDBG program, all projects and activities must meet a HUD national objective: either principally benefit low and moderate income persons, aid in the elimination or prevention of slums and blight, or meet urgent needs of the community. The Eagle Market Place project purpose is eligible for a Section 108 loan because it is housing construction as part of community economic development, and 100% of the funds will benefit low and moderate income persons.

**Section 108 Loan Details**

**Security:** The principal security for the loan guarantee is a pledge by the applicant public entity or the State (in the case of a nonentitlement public entity) of its current and future CDBG funds. Additional security will also be required to assure repayment of guaranteed obligations. The additional security requirements will be determined on a case-by-case basis, but could include assets financed by the guaranteed loan.

**Repayment:** The maximum repayment period for a Section 108 loan is twenty years.

**Financing Source**: Section 108 obligations are financed through underwritten public offerings. Financing between public offerings is provided through an interim lending facility

**Other:** Other CDBG rules would also apply, including federal environmental review processes, Davis-Bacon wage rates for construction labor and Section 3 standards to proactively market available jobs to residents of the area where the project is located. Because HUD HOME program funds are committed to the project, these rules are already in place, and new management costs would not be incurred because of them.

Completion of the Eagle Market Place project is an objective within the City's of Asheville's Strategic Operating Plan under the goal area "Job Growth and Community Development."

Pro:

- According to the developer, approval of the loan request would improve the project's ability to secure North Carolina Low Income Housing Tax Credits, which are essential to the project's pro forma.

Cons:

- CDBG funds can be used as a method of repayment, but there is no guarantee that the CDBG program will continue to be funded nationally.
- Commits future CDBG funds to loan repayment for Eagle Market Place instead of funding other eligible projects.
- Sufficient security will need to be pledged for the loan. Security is negotiated with HUD during the application process.

Regarding the fiscal impact: (1) **Loan from the City to Developer:** The developer's proposed repayment schedule for the loan made by the City to the developer includes deferring payments for a period of 20 years at a 2% interest rate. The repayment schedule and interest rate do not parallel the repayment structure between the City and HUD for a Section 108 loan, therefore creating annual negative cash flows to the City's CDBG program. As a result, the City's overall annual discretionary CDBG funding will be reduced for other projects. (2) **Loan from HUD to the City:** Interest rates on interim borrowing are priced at the 3 month London Interbank Offered (LIBO) rate plus 20 basis points (0.2%). Permanent financing is pegged to yields on U.S. Treasury obligations of similar maturity to the principal amount. A small additional basis point spread, depending on maturity, will be added to the Treasury yield to determine the actual rate. While interest-only payments for a period of time can be structured, the payments are not deferred, and principal payments typically start in year 5. Based on current market conditions, staff would roughly estimate that annual debt service payments would be $100,000. Annual repayments would be allocated from CDBG funds.

If City Council approves the loan request and the resolution as presented, staff recommends that City Council direct staff to pursue a HUD Section 108 loan as a funding source or the loan.

Mr. Darryl Hart, Chairman of the Eagle-Market Streets Development Corporation (EMSDC), said that they have been working with Mountain Housing Opportunities (MHO) for the last 1.5 years for this Eagle Market Place project to come to fruition. This project will be approximately 63 rental apartments in the Eagle-Market Street area. This is really a partnership with the City, County and the community. He thanked Council for their support and hoped they would approve this action.

In response to Councilman Bothwell, Ms. Bradley that Section 108 allows eligible HUD CDBG grantees to borrow funds from future CDBG allocations to finance projects. A grantee may borrow up to five times their current year allocation. With an allocation this year of $950,000, the

City of Asheville has the authority to borrow up to a maximum of approximately $4.75 million. The City has an existing loan of $750,000, leaving about $4 million in borrowing capacity. Although the City must apply for the funds, Section 108 is a non-competitive program.

In response to Councilman Bothwell on what the risk is to the City, Vice-Mayor Manheimer said this will commit future CDBG funds to loan repayment for Eagle Market Place instead of funding other eligible projects.

Ms. Cindy Weeks, representing MHO and the Eagle Market Place project, explained that they have done everything they possibly could do to reduce the cost of the project so that it would come in at a reasonable price. She then showed before and after renderings of the project and how the project was reduced from 7 floors to 6 floors and reduced the number of units from 70 to 62.

Mayor Bellamy explained we have used Section 108 loans in the past. The good thing about this project is that it will be paying taxes. This is not a new tool for the City, and even though we have not used it often, we will see benefits to our community.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hunt moved for the adoption of Resolution No. 12-122. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 400**

**BOARDS & COMMISSIONS**

Mayor Bellamy asked that at the next Boards & Commissions Committee meeting that they consider the Mayor's Committee on Veterans Affairs, which has operated as a task force for many years, become a City-County Committee to look at veterans issues. Vice-Mayor Manheimer said that she would be happy to place that on their next meeting agenda and invite the Chairman to make the presentation.

Regarding the Board of Adjustment, there currently exists two alternate seats, left vacant by Mr. James Sheeler, term to expire January 21, 2015; and Mr. Douglas Hattaway, term to expire January 21, 2014. The following individuals have applied for the vacancies: Dimi Kulakov, Daniel Summerlin, Robert M. Swicegood and Derek Weekley. It was the consensus of Council to interview all four individuals.

Regarding the Homeless Initiative Advisory Committee (HIAC), there are two vacancies (1) term of Wanda Lanier expired on November 1, 2011; and (2) vacancy from the passing of Gerald Hixson, whose term will expire on November 1, 2013. The following individuals have applied for the vacancies: Debbie Metcalf, Micheal Woods, Timothy Sadler, Charles Rosenblum, John Spears, Charles Barber, Jay Lively and Michael Akers. At the request of Mr. David Nash, Chairman of the HIAC, it was the consensus of Council to delay making appointments until the HIAC make their recommendation.

Regarding the Sustainable Advisory Committee on Energy & the Environment (SACEE), there currently exists a vacancy for someone who has "expertise in the field of energy management." This term would expire December 31, 2013. The following individuals have applied for the vacancy: William Hutchings, Timothy Ballard, Charles Rosenblum, Stuart Smith, Peter Brezny, Marcus Renner, Lawrence Pittman, Alan Watts, Brandee Boggs and Melita Kyriakou. At the suggestion of SACEE, it was the consensus of Council to interview Timothy Ballard and Brandee Boggs. In addition, it was also the consensus of Council to interview Lawrence Pittman.

Regarding the Planning & Zoning Commission, it was noted that Mr. Mark Brooks and Ms. Holly Shriner's terms on the Planning & Zoning Commission expire August 14 of this year. Both are eligible for reappointment and have excellent attendance records. Last year a new appointment process was established for the three Commission vacancies. It was the majority of Council's consensus to proceed with the newly-established process for appointments to these two seats, noting that both Mr. Brooks and Ms. Shriner will be considered for reappointment. Mayor Bellamy and Councilman Davis did not support proceeding with the new process because they felt the process established last year was when there were vacancies, not reappointments.

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Rev. Christopher Chiaronmonte spoke about the proposed business improvement district and the police violating his civil rights.

Mr. Joe Minicozzi thanked Council for their vote on digital billboards.

When Mr. Tracey DeBruhl asked for information to become a member on the Mayor's Committee on Veterans Affairs, Mayor Bellamy referred him to City Clerk Maggie Burleson who would advise him on the process.

Councilman Bothwell was pleased to announce that in the first month of rolling out the "Big Blue" (96-gallon carts), there has been an 87% increase in recyclables collected. This is a reduction of more than 112 tons of trash headed for the landfill.

Councilman Smith reminded the public that this is Strive Not To Drive Week and was pleased to describe the new Asheville Redefines Transit Program.

**Mountain Area Information Network**

Mr. Tim Ballard, member of the Board of Directors of the non-profit Mountain Area Information Network (MAIN) was joined by fellow Board member Isaac Coleman, read the following statement: "As you know, at your April 24 Council meeting, City staff was directed to work with MAIN to reach a mutually agreeable resolution of MAIN's past-due rent for space on the City's cell tower. Our understanding was that it was Council's desire that the past-due rent to be paid in full over a reasonable time period, and that any repayment plan include a substantive upfront payment. The MAIN Board of Directors met recently and approved the following repayment plan which meets these requirements. We are prepared to make: an upfront payment of $7,000; resume the monthly payments; and repay the balance in full by June 1, 2014. This repayment schedule would consist of two equal, annual payments, the first on June 1, 2013 and the second, and final, payment on June 1, 2014. As you may have read in the Asheville Citizen-Times op-ed page this past Sunday, MAIN plays a unique and important role in our community's ability to create and sustain a vibrant locally oriented economy. We also understand that City staff does not have the authority to take this public-service mission into account. But you, as our elected representatives, do have that authority. We are here tonight to ask you to exercise that authority by accepting MAIN's offer to repay the tower arrears, in fully, by June 1, 2014."

**Legislative Research Commission – MSD**

Vice-Mayor Manheimer said that the Mayor has received a letter from Mr. Steve Aceto, Chairman of the Metropolitan Sewerage District (MSD), asking the City if they would like to engage in negotiations with MSD as mentioned in the Legislative Study Committee's report. The report mentions that if the parties are engaged in good faith negotiations they will not pass legislation in the 2013 Session forcing the City of Asheville to transfer its water system to MSD. She felt the letter would require some response from the City. At her suggestion, it was the

consensus of Council, to respond to MSD by acknowledging receipt of the letter and stating that the City is in the process of determining their next steps.

Vice-Mayor Manheimer said that she and Councilman Davis are appointed as liaisons to the Task Force that was tracking the Study Committee, but now that the Study Committee is done with its work Council will need to re-tool how we want to approach this. We have engaged former City Manager Doug Bean, who is now with Raftelis, to help us interact with MSD as they interact with their study about a merger.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:54 p.m.

Magdalen Bullerson
CITY CLERK

MAYOR

Tuesday – May 29, 2012 – 6:30 p.m.
Public Works Facility

Community Meeting - Central Asheville

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

Mayor Bellamy opened the meeting, welcomed the audience and introduced City Council members.

Assistant City Manager Jackson provided the audience with a brief overview of the City Council Strategic Goals, noting that the 2011-12 end of year update would be provided at Council's August 28 meeting.

Director of Planning & Development Judy Daniel provided a brief update on the following: upgrades and renovations to City Hall; Buncombe County Courthouse repairs and additions; Charlotte Street potential traffic study; private investments in the east end of the Charlotte Street Corridor; Central Business District Food Truck Court; Lenoir Rhyne University in the Chamber of Commerce Building; new Harris Teeter grocery on Merrimon Avenue; Eagle-Market Street development; Pack Square Park Pavilion; Aloft Hotel; Art Museum expansion; new Diana Wortham Theatre entry; Pack Place historical exhibit; consideration of a Business Improvement District; update on 88 Haywood Street property; US Cellular Center continuing interior upgrades; and Lexington Avenue "Best Main Street Award".

Mayor Bellamy then opened up the meeting for questions. Questions/comments responded to consisted of (and those which could not be immediately responded to would be followed-up by City staff to the appropriate individual): how was the decision arrived at that Asheville needs another hotel on the Haywood Street property; who serves on the City Council Planning & Economic Development Committee; why hasn't the decayed Flying Frog building already been demolished; suggestion for City to tear down Flying Frog building and add the cost to the purchase price; complaints of noise, drunk and disorderly conduct at the Brewgrass Festival in Martin Luther King Jr. Park and request that it be relocated next year; opposition to Business Improvement District; support of Business Improvement District; request for relocation of Water Maintenance Division at 174 S. Charlotte Street due to unacceptable noise levels; what terminates the grandfathering of an existing digital billboard; concerns of prostitution in the South French Broad area; overwhelming traffic on South French Broad during school hours; need to include African Americans in planning processes; what are the roles of the ambassadors of the proposed Business Improvement District; and request not to proceed with the Charlotte Street Corridor traffic engineering analysis.

Mayor Bellamy and Council members expressed their appreciation for the community involvement.

At 8:15 p.m., Mayor Bellamy adjourned the meeting.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – June 5, 2012 – 3:30 p.m.

Special Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Gordon D. Smith

**BUDGET WORKSESSION**

**Employee Compensation**

Director of Finance and Management Services Lauren Bradley reviewed the Fiscal year 2012-13 budget goals and the rating agency reports for Asheville. She said that in the proposed Fiscal Year (FY) 2012-13 budget there is a 1% cost of living adjustment (COLA) effective July 1, 2012. In addition, there will be a revisit of compensation when (1) year-end sales tax numbers come in late August (sales tax base adjustment may generate recurring source of funds for additional base salary adjustment); and (2) audit is complete in November (fund balance above 15% may provide one-time source of funds for employee bonuses.

Ms. Bradley then reviewed the FY 2012-13 budget revenues, showing a subtotal net change in revenues of $2,235,000. She then reviewed the budget expenditures of technical assumptions - $1,345,000; and revenue less expenditure obligations - $785,000. Expenditure variables total $815,000, with a revenue less strategic investments of a negative $30,000.

She then explained in detail Option #1 – 2% COLA and a one-time bonus. Funding considerations: (1) sales tax projections will not be verified until late August; if actuals fall short of estimates, the City will have to capture mid-year savings to balance the budget; and (2) utilizes one-time capital reserves that could be used for other projects; replacement of obsolete equipment is a recurring expense.

She then explained in detail Option #2 – 3% COLA. Funding considerations: (1) sales tax projections will not be verified until late August; if actuals fall short of estimates, the City will have to capture mid-year savings to balance the budget; (2) utilizes one-time capital reserves that could be used for other projects; replacement of obsolete equipment is a recurring expense; (3) utilizes Parking Fund transfer to General Fund for salary expenditures; funding source would need to be revisited in FY 13-14; and (4) utilizes Fund Balance allocation for recurring expenditure priorities (Housing Trust Fund, Form-Based Code); funding source would need to be revisited in FY 13-14.

Policy direction needed included (1) to what level should employee COLA adjustments be funded in the FY 2012-13 adopted budget; (2) if an increase is approved, does City Council support the funding alternatives provided; (3) does City Council support a market-based compensation analysis to be used as a tool to make salary recommendations in the FY 2013-14 budget; and (4) moving forward, are there priorities or areas of interest that should be pursued in the next budget cycle.

There was considerable discussion on each option, with Mayor Bellamy and each Council member voicing why their supported either Option 1 or Option 2. Option 1 was supported by Vice-Mayor Manheimer, Councilman Hunt and Councilman Pelly with the one-time bonus (depending on Fund Balance in November) for the approximately 800 employees who earn $75,000 or less. Mayor Bellamy, Councilman Bothwell and Councilman Davis supported Option

2. Vice-Mayor Manheimer and Councilman Hunt noted that Councilman Smith expressed support for Option 1.

Ms. Bradley said that adoption of the budget is scheduled for June 12; however, if can be delayed until the June 26 meeting.

Mayor Bellamy asked that staff have language ready to insert in the budget ordinance on June 12 to reflect the majority of Council's wishes regarding employee compensation. She also challenged City staff to find cost saving measures in order to provide a 3% employee pay increase.

As Vice-Mayor Manheimer will be out of town on June 12, City Attorney Oast said that he would verify that a vote on the budget via speaker phone would be appropriate.

**ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 4:59 p.m.

Magdalen Bowerson
CITY CLERK

MAYOR

Tuesday – June 12, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Esther E. Manheimer

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Hunt gave the invocation.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

At the request of City staff, it was the consensus of Council to add the following on the Consent Agenda: "Resolution amending Resolution No. 12-107 allowing for the provisions of malt beverages and/or unfortified wine at the Asheville Grizzlies football game to change the date from June 18 to June 16, 2012.

**A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON MAY 22, 2012; THE MAY 29, 2012, COMMUNITY MEETING; THE BUDGET WORKSESSION ON JUNE 5, 2012**

**B. RESOLUTION NO. 12-124 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONSTRUCTION AGREEMENT WITH PATTON CONSTRUCTION GROUP INC. FOR THE CHALLEDON SUBDIVISION WATERLINE REPLACEMENT PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to enter into a construction agreement with Patton Construction Group, Inc., in the amount of $314,360.00 for the Challedon Subdivision Waterline Replacement Project.

This project consists of the installation of approximately 5,300 Linear Feet (LF) of new 6-inch Ductile Iron Pipe (DIP) along with all associated valves, hydrants, and services to provide fire protection and domestic water service to the Challedon Subdivision located in Candler, NC. The proposed waterline will replace an existing 6-inch Polyvinyl Chloride (PVC/plastic) line that will be abandoned once construction of the new line is complete. The Water Resources Department (WRD) issued an Advertisement For Bids for the construction project. In response to the Advertisement For Bids, the WRD received seven (7) proposals.

Companies responding were:

1. Patton Construction Group, Inc.– Arden, NC
2. Cooper Construction Company Inc. – Flat Rock, NC
3. Huntley Construction Company, Inc. – Asheville, NC
4. Cana Construction – Waynesville, NC
5. Carolina Specialties Construction, LLC – Hendersonville, NC

6. Steppe Construction, Inc – Mill Spring, NC
7. T & K Utilities, Inc. – Asheville, NC

The bids were reviewed by City Staff and selected Patton Construction Group, Inc., as the lowest responsible bidder at a bid of $314,360.00.

This project is part of City Council's strategic plans to improve city infrastructure and provide local companies with labor opportunities.

Pros:

- This project will replace an existing waterline that ruptures often, causing costly repairs for the City and Water Resources Department and frequent outages for the customers, with a durable, reliable, sustainable water system for the Challedon Neighborhood.
- This project is aligned with the City and Water Resources Department goal of continued investment and improvement of the City's water system through Capital Improvement Projects, in order to provide safe and reliable service.
- Approval of the construction contract to the lowest responsible bidder will invest City funds in the local economy.

Con:

- Failure to award a construction contract would prevent the completion of this high-priority waterline replacement project and maintenance issues with the existing line would continue.

The Water Resources Department currently has the funds needed for this project budgeted in the Water Resources' Capital Improvement Projects Fund.

City staff recommends City Council approval of the City Manager to enter into an agreement with Patton Construction Group, Inc. in the amount of $314,360.00 for the Challedon Subdivision Waterline Replacement Project.

**RESOLUTION BOOK NO. 34 – PAGE 402**

**C. RESOLUTION NO. 12-125 - RESOLUTION SETTING A PUBLIC HEARING ON JUNE 26, 2012, FOR THE ADOPTION OF AN ORDINANCE ORDERING THE DEMOLITION AND REMOVAL OF 44 LINDEN AVENUE**

Summary: The consideration of a resolution calling for a public hearing on June 26, 2012, for the adoption of an ordinance ordering the demolition and removal of the dwelling located at 44 Linden Avenue.

This property first came to the attention of the Building Safety Department in the summer of 2009, having been the scene of a fire several years earlier. Numerous efforts were made to locate the whereabouts of the property owner to no avail. Additionally, the owner was in default of a deed of trust and the lender had instituted foreclosure proceedings. Upon the lender's failure to follow through with the foreclosure sale, the City after giving notice, held an administrative hearing, ordering the demolition of the dwelling. The owner has voiced no opposition to the order of demolition. The dwelling is in a severely dilapidated condition in that the fire has substantially impacted the structural integrity of the foundation of the dwelling, no windows, gutters are missing, the eves are burned and failing with the interior of the dwelling severely smoke damaged throughout.

This action supports the city's strategic goal of implementing strategies to significantly improve public safety in neighborhoods.

Pro:

- Eliminates a health and safety hazard and contributes to the City's tax value

Con:

- There is a $113,750 Deed of Trust along with a $21,340.00 line of credit against the property in favor of Bank of America. To protect the City's demolition lien, the City, maybe forced to litigate the superiority of its lien over Bank of America's liens.

City Council authorized the use of fund balance for demolitions on March 13, 2012. The demolition is expected to cost $8,750.

City staff recommends that City Council adopt the resolution setting the date of public hearing on June 26, 2012, to consider an ordinance to order the demolition of the dwelling located at 44 Linden Avenue.

**RESOLUTION BOOK NO. 34 – PAGE 404**

**D. ORDINANCE NO. 4086 - ORDINANCE ENACTING AND/OR CHANGING THE SPEED LIMIT TO 25 MPH ON BORIS STREET, COMPTON DRIVE, EVELAKE DRIVE, GALAHAD PLACE, GAWAIN STREET, GUINEVERE COURT, KING ARTHUR PLACE, LANCELOT LANE, LIONEL PLACE, MERLIN WAY, PERCIVAL COURT, CAMPGROUND ROAD, DILLINGHAM ROAD, EDGELAWN ROAD, HERON AVENUE, MILDRED AVENUE, TRACEY DRIVE AND SCHENCK PARKWAY**

Summary: The consideration of an ordinance to enact and/or change the speed limit on Boris Street, Compton Drive, Evelake Drive, Galahad Place, Gawain Street, Guinevere Court, King Arthur Place, Lancelot Lane, Lionel Place, Merlin Way, and Percivale Court in the Camelot Subdivision to 25 mph; and enact/change a 25 mph speed limit on Campground Road, Dillingham Road, Edgelawn Road, Herron Avenue, Mildred Avenue, Tracey Drive, and Schenck Parkway.

According to state law (NCGS # 20-141), the statutory speed limit in North Carolina is 35 mph inside municipal corporate limits for all vehicles and 55 mph outside municipal corporate limits for all vehicles except for school buses and school activity buses.

Furthermore, local authorities may authorize by ordinance higher speeds or lower speeds than the statutory 35 mph speed limit on locally-maintained streets provided that the higher speed limit cannot exceed 55 mph. Speed limits authorized by local authorities are effective when the appropriate signs are erected.

City staff recently completed traffic engineering investigations and determined that a 25 mph speed limit would be reasonable and safe on the following streets in the Camelot Subdivision. The subject streets primarily serve residential areas in this subdivision. They are Boris Street from King Arthur Place to Lancelot Lane, Compton Place from NC 63 New Leicester Highway to the end of City maintenance, Evelake Drive in its entirety, Galahad Place in its entirety, Gawain Street from King Arthur Place to Lancelot Lane, Guinevere Court in its entirety, King Arthur Place in its entirety, Lancelot Lane in its entirety, Lionel Place from Guinevere Court to the end of City Maintenance, Merlin Way from Compton Place to the end of City Maintenance, and Percivale Court from Evelake Drive to the end of City Maintenance.

Additional traffic engineering investigations were conducted by City staff that indicated that a 25 mph speed limit would be reasonable and safe on Campground Road from Maple Springs Road to Bull Mountain Road, Dillingham Road from New Haw Creek Road to Old Haw Creek Road, Edgelawn Road from Midland Drive to Stratford Road, Herron Avenue from Haywood Road to Craggy Avenue, Mildred Avenue from Haywood Road to Herron Avenue, Tracey Drive from Hazel Mill Road to Skyview Terrace, Schenck Parkway from NC 146 Long Shoals Road to its southern intersection with East Schenck Crescent, and Schenck Parkway from its northern intersection with East Schenck Crescent to the end of City maintenance.

This action complies with the City Council Strategic Operating Plan in the Safety focus area by improving the "street experience" for all users including pedestrians, bicycles, and motorists in a primarily residential corridor.

Pros:

- City staff has been able to respond favorably to citizen's requests.
- The new speed limit will be consistent with roads of like character and design.
- This action will "clean up" some roads where the signs do not reflect the ordinance.
- This action will also bring some of the roads into line with our speed limit policies.
- Based on the 85th percentile speeds, most drivers would adhere to a 25 mph posted speed limits on these roads.

Cons:

- The initial cost to install the appropriate speed limit signs is about $1,200.00.
- Typically, speed limit signs have a serviceable life of five to seven years.

The initial cost to install the appropriate speed limit signs is about $1,200.00 and is included in the current operating budget for the Transportation Department.

City staff recommends that City Council approve an ordinance enacting and/or changing a 25 mph speed limit on Boris Street from King Arthur Place to Lancelot Lane, Compton Place from NC 63 New Leicester Highway to the end of City maintenance, Evelake Drive in its entirety, Galahad Place in its entirety, Gawain Street from King Arthur Place to Lancelot Lane, Guinevere Court in its entirety, King Arthur Place in its entirety, Lancelot Lane in its entirety, Lionel Place from Guinevere Court to the end of City Maintenance, Merlin Way from Compton Place to the end of City Maintenance, Percivale Court from Evelake Drive to the end of City Maintenance, Campground Road from Maple Springs Road to Bull Mountain Road, Dillingham Road from New Haw Creek Road to Old Haw Creek Road, Edgelawn Road from Midland Drive to Stratford Road, Herron Avenue from Haywood Road to Craggy Avenue, Mildred Avenue from Haywood Road to Herron Avenue, Tracey Drive from Hazel Mill Road to Skyview Terrace, Schenck Parkway from NC 146 Long Shoals Road to its southern intersection with East Schenck Crescent, and Schenck Parkway from its northern intersection with East Schenck Crescent to the end of City maintenance.

**ORDINANCE BOOK NO. 27 – PAGE 372**

**E. RESOLUTION NO. 12-126 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LICENSE AGREEMENT WITH DUKENET COMMUNICATIONS LLC FOR INSTALLING, OPERATING AND MAINTAINING FIBER OPTIC EQUIPMENT AT 166 RESERVOIR ROAD**

Summary: The consideration of a resolution authorizing the Mayor to execute a License Agreement with DukeNet Communications, LLC for the purposes of installing, operating and maintaining fiber optic equipment at 166 Reservoir Road.

The property at 166 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge. Two telecommunication towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

DukeNet Communications, LLC provides fiber optic service to many of the telecommunications tenants at the site. In order to facilitate greater service to their clients, DukeNet requests to lease approximately 6,480 square feet in order to install fiber optic cable to connect the two towers on the premises. This license area measures 10 feet in width and is

approximately 648 feet long. DukeNet intends to use this license area for fiber optic communications between the two towers. The proposed term of the License Agreement will be five (5) years with one renewal period of five (5) years.

As consideration for the license agreement, DukeNet has agreed to grant the City the right to use twelve (12) designated dark fibers or unlit fibers along S. Charlotte Street to Reservoir Road for the same term of 10 years total. These dark fibers are bundled within DukeNet's existing fiber optic network, yet are not currently utilized by DukeNet (unlit). Through this value exchange, the City is seeking to create a no-cost link that will increase public safety network reliability for the City of Asheville's radio system. This link would cost approximately $45,000 if constructed separately.

In the coming years, the property at 166 Reservoir will be utilized as part of the Beaucatcher Greenway for potential parking, overlook areas, trail areas, etc. In order to minimize any impact to the future park development or the Beaucatcher Greenway development, DukeNet has agreed relocate the fiber optic line within City property if a portion of the designated license area is needed for Park or greenway development.

The Notice of Intent to enter into a License Agreement with DukeNet Communications, LLC was published on June 1, 2012, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested.

This action aligns with City Council's Strategic Operating Plan in that strategic agreements that enable the City to improve telecommunications infrastructure in exchange for use of City real property complies with the City's commitment to Fiscal Responsibility.

Pros:

- Maximize the value of this license agreement through the access to the DukeNet fibers
- Adds a link that will contribute to the City of Asheville's public safety radio reliability
- DukeNet agrees to relocate fiber optic line if in conflict with the future greenway or park

Con:

- None.

Under the License Agreement, the City will not receive any revenue from DukeNet; however the City will receive the right to use twelve (12) designated dark or unlit fibers along S. Charlotte Street to Reservoir Road which will save the City an estimated $45,000 in fiber optic installation costs.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute the license agreement with DukeNet Communications, LLC on behalf of the City of Asheville.

**RESOLUTION BOOK NO. 34 – PAGE 406**

**F. RESOLUTION NO. 12-127 - RESOLUTION AUTHORIZING CITY STAFF TO APPLY FOR A FEDERAL TRANSIT ADMINISTRATION GRANT TO HELP PAY CURRENT TRANSIT SYSTEM FUEL COSTS AS CAPITAL MAINTENANCE EXPENSES AND IF AWARDED, AUTHORIZING THE MAYOR TO EXECUTE THE APPROPRIATE DOCUMENTS TO ACCEPT THE GRANT**

Summary: The consideration of a resolution authorizing City staff to apply for a Federal Transit Administration (FTA) grant to help pay current transit system fuel costs as a capital maintenance expense instead of an operating expense and if the grant is awarded, authorizing the Mayor to execute the appropriate documents to accept the grant.

The 2012 Consolidated and Further Continuing Appropriations Act permits the Federal Transit Administration (FTA) to treat fuel costs for vehicle operations as a capital maintenance item for grants made in FY 2012 under the Urbanized Area Formula Program up to a total of $100,000,000. Typically, fuel costs are treated as an operating expense. Since the funds were capped, FTA is limiting the use of the funds for the subject purpose to recipients that responded to an announcement that was posted on January 25, 2012 and closed on February 29, 2012.

City staff submitted a letter of interest within the specified timeframe and as a result, we are approved to use $175,182 for fuel costs in an 80/20 ratio instead of the 50/50 ratio that is used when fuel costs are considered an operating expense. This grant does **not** constitute additional funding; it is part of the annual Section 5307 allocation.

For grant purposes, Henderson County is considered a sub-recipient and therefore is eligible to share in the grant. Based on the approved formula apportionment, their share is estimated to be about $41,294 leaving a balance of $133,888 for the City of Asheville. The total project cost equals $218,978 ($175,182 divided by 80%) which means the 20% local match equals $43,796. Asheville is responsible for $33,472 of the local match and Henderson County is responsible for $10,324.

This action complies with the current City Council's Strategic Operating Plan by operating the City of Asheville to the highest levels of fiscal responsibility.

The Transit Commission supports the subject action.

Pro:

- Enables the City to leverage operating funding and use it as a capital expense, in a ratio of 80/20 instead of the typical 50/50 ratio allowed for operating assistance.

Con:

- A 20% local match is required which equals $33,472 (City of Asheville).
- Reduces the amount of FTA funding available for future capital improvements.

This FTA grant revenue and the City's local match are already included in the Proposed Transit Fund budget for the next fiscal year.

City staff recommends that City Council adopt a resolution authorizing City staff to apply for a Federal Transit Administration grant to help pay current transit system fuel costs as a capital maintenance expense instead of an operating expense and if the grant is awarded, authorizing the Mayor to execute the appropriate documents to accept the grant.

**RESOLUTION BOOK NO. 34 – PAGE 407**

**G. RESOLUTION NO. 12-128 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS FROM THE U.S. DEPT. OF JUSTICE THROUGH THE BULLETPROOF VEST PARTNERSHIP PROGRAM 2011**

**ORDINANCE NO. 4087 - BUDGET AMENDMENT FOR THE BULLETPROOF VEST PARTNERSHIP PROGRAM 2011**

Summary: The consideration of (1) a resolution authorizing the City Manager to accept grant funds through the Bulletproof Vest Partnership Program; and (2) an associated budget amendment, in the amount of $32,056 with half the proceeds coming from the grant and the other half (City match) coming from the Police Department's FY 2011-12 budget.

The City of Asheville Police Department currently participates in the US Department of Justice BVP program. The funds allocated through this program are designed to offset

departmental cost associated with purchasing bulletproof vests. The City of Asheville has been awarded $16,028 from the grant. The grant does require a 50% match from the City, which will come from the Police Department's existing FY 2011-12 General Fund budget. These funds, along with the City match, will enable the Police Department to purchase 54 bulletproof vests. APD would have to purchase these vests at full replacement costs if the grant award had not been received.

This action complies with City Council's Strategic Operating Plan in the Focus Areas - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities and Fiscal Responsibility – The City of Asheville will support a stronger, more prosperous community by making smart investments that accomplish lasting, tangible returns.

Pros:

- Reduction in cost to the City of Asheville for the purchase of bulletproof vest
- Increase in officer safety by providing crucial safety equipment

Con:

- Requires 50% City match

There is a 50% match required by the City of Asheville in the amount of $16,028. As noted above, the match will come from the Police Department's existing FY 2011-12 budget.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to accept funds through US Department of Justice for grant monies; and (2) the associated budget amendment, in the amount of $32,056 with half the proceeds coming from the grant and the other half (City match) coming from the Police Department's FY 2011-12 budget.

**RESOLUTION BOOK NO. 34 – PAGE 408**
**ORDINANCE NO. 27 - PAGE 374**

**H. ORDINANCE NO. 4088 - BUDGET AMENDMENT TO USE NORTH CAROLINA STATE DRUG SEIZURE FUNDS**

Summary: The consideration of a budget amendment, in the amount of $10,000, to authorize the use of North Carolina State Drug Seizure Funds to fund office space improvements for the Asheville Police Department.

The North Carolina State drug seizure program is an equitable sharing program which divides the illegal proceeds from drug dealing between the North Carolina State government and local law enforcement agencies. It is designed to help off-set the considerable cost of drug enforcement, by allowing local law enforcement agencies to use seized monies for equipment, training, and improvements that might not necessarily be budgeted for by the agency. The illegal proceeds are divided with 25% going to the North Carolina Department of Revenue and 75% going to the local law enforcement agency initiating the seizure.

The City of Asheville Police Department has received $10,000 in North Carolina State drug seizure funding. This amendment will authorize the use of that funding to partially fund office space improvements at the old NC Guard Armory not covered by the APD operating budget.

This action complies with City Council's Strategic Operating Plan in the Focus Areas - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities and Fiscal Responsibility – The City of Asheville will support a stronger, more prosperous community by making smart investments that accomplish lasting, tangible returns.

Pro:

- North Carolina State drug seizure revenue used to fund office space improvements at no cost to city taxpayers.

Con:

- None noted

The increase of $10,000 for construction improvements. Accepting and allocating these funds is a financial benefit to the APD allowing us to better equip our employees. There is no impact to the General Fund budget.

City Staff recommends City Council adopt a budget amendment in the amount of $10,000 authorizing the use of North Carolina State Drug Seizure Funds to fund office space improvements for the Asheville Police Department.

**ORDINANCE BOOK NO. 27 – PAGE 376**

**I. RESOLUTION NO. 12-129 - RESOLUTION CANCELLING THE JULY 31, 2012, COMMUNITY MEETING**

**RESOLUTION BOOK NO. 34 – PAGE 409**

**J. RESOLUTION NO. 12-130 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH OTIS ELEVATOR TO PROVIDE ELEVATOR MAINTENANCE AND REPAIR SERVICE FOR MULTIPLE MUNICIPAL BUILDINGS**

Summary; The consideration of a resolution authorizing the City Manager to enter into a contract with Otis Elevator to provide elevator maintenance and repair service for multiple municipal buildings.

The City of Asheville currently has a service contract with Otis Elevator, located at 203 Elk park Drive, Asheville, NC. This contract is renewable. Otis Elevator has proposed to renew and extend the contract to include a 7% discount for the next year and capping all future year increases at 5% per year in a five-year contract. The service contract is a predictive, preventative maintenance system for the Otis elevators at City Hall, Municipal Building, Stephens Lee Recreation Center, and Asheville Fire Station 11. The total contract amount for Fiscal Year 2013 is $64,433.71.

This contract supports the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities.

Pros:

- Provides a contract to maintain and provide repair service to the elevators at City Hall, Municipal Building, Stephens Lee Recreation Center, and Fire Station 11;
- Provides a discount in cost for the next two fiscal years with fixed increases the following three years;

Cons:

- Maintenance cost to the elevators at City Hall will continue to increase due to the age of the elevators increasing the annual service contract.
- Some repair costs may still be incurred for repairs beyond the scope of this contract.

The $64,433.71 for contracted elevator services is budgeted in the City's Fiscal Year 2012-13 operating budget for facilities maintenance.

City staff recommends that City Council adopt a resolution authorizing the City Manager to sign the contract with Otis Elevator to provide elevator maintenance and repair services for multiple municipal buildings in the amount of $64,433.71.

**RESOLUTION BOOK NO. 34 – PAGE 410**

**K. RESOLUTION NO. 12-131 – RESOLUTION AMENDING RESOLUTION NO. 12-107 ALLOWING FOR THE PROVISIONS OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES FOOTBALL GAME FROM JUNE 18, 2012, TO JUNE 16, 2012**

**RESOLUTION BOOK NO. 34 – PAGE 411**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the amended Consent Agenda. This motion was seconded by Councilman Smith and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. UPDATE ON STATE LEGISLATIVE ISSUES

**Asheville Airport**

Mayor Bellamy said that the City needs to take a formal position on the Airport legislation (House Bill 552) which was introduced on March 30, 2011, to establish the Greater Asheville Regional Airport Authority as an independent authority.

Councilman Smith restated the motion which carried unanimously on April 26, 2011, and moved to communicate to our legislators that the Asheville City Council is opposed to HB 552 with the following specific concerns (1) provisions to restrict the types of citizens who can serve on the board, (2) proposal to transfer title away from the taxpayers of Asheville to another entity; (3) if any properties are developed, under any circumstances where City tax-payer funding was used, for non-aviation purposes, that the City's equity position be recognized and considered; and (4) over the make-up of the board in terms of the number of people from each jurisdiction who can serve on the Board. The motion emphasized that we are strongly opposed (especially strongly concerned regarding compensation) to this happening without our input and ask if this moves forward that the concerns outlined be taken into consideration. The motion also formally requested an opportunity to dialogue further regarding the proposal. This motion, as restated to Councilman Smith was seconded by Councilman Bothwell and carried unanimously.

City Attorney Oast said that a letter was prepared and sent to all our legislators last year with Council's concerns.

Mayor Bellamy noted that the Airport was clearly paid for by Asheville taxpayers.

Mayor Bellamy urged Council to call on each of our legislators and reaffirm our commitment to keep the Airport. Also she asked that our legislative liaison relay Council's opposition to our legislators as well.

It was the consensus of Council to instruct the City Attorney to prepare another letter to our legislators expressing Council's continued opposition and concerns regarding HB 552.

**Legislative Study Committee on Water**

Mayor Bellamy said that the Committee on Metropolitan Sewerage/Water System of the Legislative Research Commission has recommended that the 2013 Session of the North Carolina General Assembly consolidate the City of Asheville's water system with the Metropolitan Sewerage District. The Committee also recommended an option for the "interested governments" to "craft their own solution for consolidation." Mr. Steven Aceto, Chairman of the Metropolitan Sewerage District (MSD) sent a letter to her asking the City to be part of the process where MSD will study the impact of a possible consolidation of the water and sewer systems on MSD ratepayers. She responded to him stating that the Council will deliberate on the best course of action moving forward.

Mayor Bellamy said that recently she travelled to Raleigh and spoke with our legislators and at that time Representative Tim Moffitt offered to come talk to City Council about this issue. She felt it would be good to have all our legislators come to ask them what their expectations are for the City and MSD to craft their own consolidation solution.

Councilman Smith said that it was his understanding the MSD was looking to have a solution crafted by November, but based on the timetable provided by the Legislative Research Commission, the November date seems rushed and we should approach this as deliberately as we can.

After a brief discussion, it was the consensus of Council to (1) instruct City Attorney Oast to draft a letter for the Mayor's signature inviting our legislators to meet with City Council to provide clarity on what their expectations are for the City and MSD to craft a consolidation solution; (2) participate in the MSD process going forward (noting that Raftelis will be able to provide MSD facts and craft information needed to support a regional scope more than just having Asheville turn over its assets) – Councilman Pelly is on the MSD Planning Committee and Vice-Mayor Manheimer is also on the MSD Board; and (3) since MSD is only looking at one part of this, that the City Manager be instructed to draft a letter to other local officials from area municipalities (or their designees) and service providers to also be a part of the process. That way we will have all the leaders that provide water in Buncombe County as well as our neighboring counties (if they are really talking about a regional authority).

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING TO CONSIDER A MUNICIPAL SERVICE DISTRICT FOR DOWNTOWN ASHEVILLE

Project Manager for the Asheville Downtown Master Plan Sasha Vrtunski said that this is the consideration of a resolution creating a downtown Municipal Service District, also known as a Business Improvement District (BID), in downtown Asheville. This public hearing was advertised on June 1, 2012.

She said that the Downtown Master Plan, adopted by City Council in June 2009, strongly recommended a downtown management entity for Downtown Asheville. A subcommittee was formed by the Downtown Commission to explore this idea, and began meeting in December 2009. The Management committee worked for two years exploring a district for downtown Asheville. This included a needs survey, an Economic Benefits Study (which also included a business survey), a public forum at the Civic Center, and a series of seven meetings with business and property owners.

In December 2011, an Interim Board was formed as the Management Committee recognized that it did not have enough property owners to finalize a plan. The Interim Board was

composed of some of the larger property owners, whom also have a long history with Asheville's downtown revitalization.

The Interim Board has worked over the past six months to develop a proposal for the business improvement district, and presented it at five open meetings, and numerous smaller meetings with property owners.

City Attorney Oast said the statute that governs the establishment of municipal service districts has certain requirements and City Clerk Burleson has provided that certification into the record.

Ms. Susan Griffin, property owner and resident in downtown, past Secretary and Vice-President of the Asheville Downtown Association and former Chair of DARN, provided Council with the history of the downtown area. Sixty years ago the downtown was the place to be, but in the 1970's the area rapidly declined. In 1977 City Council took the lead in getting downtown back on track, working closely with the private sector to revitalize and rehabilitate downtown. One of the most effective tools it had was the Downtown Development Department. In 1991 the Downtown Development Department lost its focus and no one was directly managing downtown. About 12 years later the Downtown Commission recognized the need to refocus on downtown. They urged Council to fund the Downtown Master Plan, which they adopted in 2009. Action committees were formed to implement each of the 7 strategies in the Plan. The Downtown Management Committee, which she Chairs, was appointed in 2009 to study Strategy 7 – Downtown Management. Goals were to ensure that downtown stayed clean, green and safe and to empower stakeholders to collaborate in decisions and investments that support mutual downtown interests. Action items were (1) study current conditions and services in the Central Business District (CBD) and develop a baseline of services; and (2) researched BIDs in North Carolina and all around the country to see how they worked, problems they faced and how they overcame them. They researched several different models, i.e., volunteers, lobbying, etc. Since North Carolina legislation was enacted in 1973 there have been 50 BIDs formed in North Carolina. The oldest was formed in Hendersonville in the early 1980's and it is still existing today. There are over 1,000 BIDS across the United States and many of them are formed in culturally and politically progressive cities. Many are formed to revitalize a dying downtown area, but many others are formed to manage, maintain and capture the unique vibe of their districts. Research shows that BIDS have had a positive impact wherever they are implemented. The Downtown Management Committee commissioned an economic benefit study to find out the impact on Asheville. The study showed a downtown BID would have a positive impact on the retail sales, on property values and on creation of jobs in the BID increased. This would be increased revenues for property owners downtown and also to City and County coffers, thereby benefitting all citizens of the area. The Downtown Management Committee formed an interim Board – 13 members who are all property owners, representing different types of stakeholders in the downtown area. They were charged with four things – to come up with a proposal that included the boundaries, services, assessment and the board make-up. She urged Council to support the BID.

Mr. Peter Alberice, property owner and resident in downtown, past President of the Asheville Downtown Association, past Chair of the Downtown Commission, and chair of the Asheville Area Chamber of Commerce, explained the proposal in depth. The interim BID Board generated the Business Improvement District Formation Report, which has been on the City's website since May 10, 2012. He explained how they determined the BID boundary which is to match the CBD. He explained how the assessment of 7-cents per $100 was arrived at – noting that the state average is 15-cents. For 67% of downtown property owners, their daily assessment would be 96-cents. Major property owners' daily assessment would be approximately $1.92. Regarding the proposed budget, 77% (613,865) would be budgeted for clean & safe; 13% ($103,937) would be for advocacy & coordination; and 10% ($82,187) would be for administration – totally $800,000. The clean and safe program would consist of regular sweeping/washing of sidewalks, litter/trash pick-up, graffiti removal, snow removal, landscaping/amenities

maintenance, and ambassador program. He was clear that the ambassador program is not going to be a police force – they will be unarmed and have a two-way radio or cell phone and if there is a problem, they will call the Police Department. The advocacy & coordination program would be to (1) bring downtown folks together to talk about issues; (2) work with City and County officials; (3) give district property owners a "point person" for problem solving; and (4) ensure all downtown voices have a forum. The Board of Directors proportionately represents different types of property owners, will prepare an annual work plan, will have financial oversight, will have program and staff oversight, and will represent property owners' interest. He said there is a 3-year sunset clause. In summary, he said this is a great opportunity for the City that it will help address issues such as revenue generation within downtown, help increase the tax base of the downtown and to provide another feature for people who are interested in coming to Asheville whether they want to start a business, build a project, renovate an old building, or live here. He urged Council to support the BID.

Mayor Bellamy opened the public hearing at 5:40 p.m.

The following individuals spoke in support of the BID for several reasons, some being, but are not limited to: positive impacts a BID can have on a community; important to put an infrastructure in place to protect the investment made years ago to keep our vibrant downtown; with a BID, those that decide to assess themselves also make the decisions about where the money will be spent; a BID will promote infill development; a BID provides a return on investment; a BID increases services to downtown; cities that currently have BIDs renew them over and over again because they have been successful; an important role of the BID is advocacy where there will be a central point of information; some have noted that their savings alone on graffiti would accommodate the assessment; the City can't pay for all the solutions needed for downtown, i.e., remove graffiti on private property; a BID will keep the sidewalks clean from dirt, cigarette butts, dog excrement, overgrown weeds, graffiti, sidewalk stains etc; reasons why volunteers cannot manage the BID; each state has different legislation regarding BIDs and each BID is tailored for each individual city; BIDs are for cities that are revitalized; now is the time to make downtown sustainable in an insecure time and create a funding source for downtown improvement that can weather the winds of political change; there will be an increase in retail sales and property values; the interim BID Board is a cross-section of downtown property owners from small entrepreneurs to residents of small, medium and large property owners; the BID will not create a gated community or mall atmosphere; BID concept is to make Asheville cleaner and safer for everyone; if people are unhappy with the BID, it can be altered or discontinued after three years; support for the BID will bring in a $700,000 overture to make our downtown neighborhood cleaner, safer and more prosperous; a BID has been suggested back in 1988; a BID will provide a consistency of service so that all of downtown will be safer and look its best with all of us determining the needs and sharing the cost; and lack of existing police services:

Ms. Kit Kramer, downtown resident, President of the Asheville Area Chamber of Commerce, past President of the International Downtown Association, and former Downtown Manager
Mr. Bob Barringer, Asheville resident
Ms. Kim MacQueen, property owner and business owner of a business downtown, member of the Downtown Management Committee, former Chair of the Downtown Commission, former Chair of the Downtown Association, etc.
Mr. Tom Gallagher, Asheville resident and local consultant who drafted the Downtown Master Plan
Mr. Adrian Vassallo, President of the Asheville Downtown Association
Mr. Joe Minicozzi
Mr. Andy Brockmyer, downtown resident
A north Asheville resident
Mr. Dwight Butner, former President of the Asheville Downtown Association, former Chair of the Downtown Commission, downtown resident and business owner
Owner of two downtown businesses and Director of the Asheville Grown Business

Alliance
Ms. Rebecca Hecht, member of the Downtown Master Plan Committee, member of the Asheville Downtown Commission, Board member of the Asheville Downtown Association, and owner of two downtown businesses
Mr. Buck Bragg, downtown property owner
Mr. Barry Olen, downtown property owner
Mr. David Quinn, planner focused on downtown and member of Asheville Downtown Association
Mr. Pat Whalen, downtown property owner and resident
Mr. Larry Holt, downtown property owner
Ms. Kim McGuire, downtown property owner
Ms. Judy Swan, downtown property owner
Mr. David Nutter
Property owner on Pearl Street
Downtown business and property owner
Business owner downtown

The following individuals spoke in opposition to the BID for several reasons, some being, but are not limited to: concern of make-up of BID Board of Directors; raising taxes in downtown will divide our community; the BID will impose of the will of a certain group of people on everyone; other citizens of Asheville work, eat and attend events downtown and just the property owners in downtown should have to pay for its upkeep; there is little evidence to support the financial claims that a BID brings to the community; there is no way of knowing whether residential property values would increase or decrease as a result of this added BID tax; higher taxes might deter buyers from living downtown and encourage them to buy less expensive property outside of the CBD while still have access to City amenities; the BID structure is not fair or democratic; the BID Board of Directors are an elite group; some businesses hire employees to pick-up trash in front of their buildings, shovel snow and clean their sidewalks and the BID will not be providing any services for them; it should be the responsibility of the downtown property owners to keep the front of their business neat and clean; some people feel overly-taxed and are already having a difficult time paying taxes; many downtown property owners feel unrepresented and abandoned by the BID Board; the BID tax will cost larger property owners much more and it will be passed down to tenants; if you keep taxing downtown businesses, you will see chain stores because small businesses won't be able to afford staying there; we elected City Council to run the City, not the BID Board of Directors; suggestion for the two opposing sides to meet and come back to Council in six months; and question if hotels in the downtown area should be considered in the BID because they already pay a hotel/motel tax:

Mr. Scott Owen, farmer and struggling artist
Property owner at 61 N. Market Street
Mr. Fred Guggenheim, downtown property owner
Mr. Liberty Valance, downtown business owner
Mr. Hunt Mallet, downtown property owner
Mr. Russell Thomas, managing partner for the Flat Iron Building
Mr. Martin Ramsey
Mr. Clayton Ludeman, property owner at 52 Biltmore Avenue – presented Council with a petition containing 25 signatures from the Oxford Place Condominiums that are opposed to the BID
Mr. Wes Rhinehart, representing FIRC Group
Mr. Chris Peterson, downtown property owner
Mr. Steve Lansford, downtown property owner
Mr. Denny Pearson, owner of Hotel Indigo on Haywood Street
Mr. Steve Rasmussen, worked on the Downtown Master Plan
Representative of WNK Asheville LLC (major property hotel owner in downtown)

The following individuals asked that Council delay any decision on the BID until issues have been addressed, some being, but are not limited to: The Ambassador program has no mention of the Asheville Police Department along with minimal oversight by the City of Asheville; BID will make life harder for the homeless; there is no representation on the BID Board of Directors from the social service community; this is a complex situation and even though a lot of good information has been presented, more information needs to be; surveys were sent to 369 residential condos in 17 buildings and out of those 369 surveys sent - 108 responses were received of which 101 were opposed to the BID; and most of the support heard today was from those involved in the process:

Mr. Karl Katterjohn, Asheville resident
Mr. John Spitzberg, Veteran for Peace and member of the Asheville Homeless Network
Mr. William Wilcox, owner and operator of the BB&T Building in downtown Asheville
A lady
Mr. Timothy Sadler

Mayor Bellamy closed the public hearing at 7:44 p.m.

Councilman Hunt acknowledged the enormous amount of hard work by a lot of people who have worked on this. He believed the downtown is a key part of the economic engine for this community and is very supportive of a BID. He felt that everyone in the community will benefit from the well-led BID effort. There are very few things in our political toolbox that will allow a local government to progressively and creatively reinforce its own vibrancy. Enthusiastic as he is of the BID, he believed more work is required. The additional work with a better focus will help satisfy some unsettled views and ultimately will improve the likelihood that we will have a great BID. He felt more time would allow for a better definition of the structure of the corporation the City would be contracting with for the BID services, the governance of it, what kind of oversight the City Council might have over that, a draft contract between the City and the BID corporation, the budget taken to a more refined level, etc. He believed the City Manager and the City Attorney are prepared to support a process to add the kind of definition needed. It will mean a year delay in implementation. He then moved to continue the public hearing to September 25, 2012, and direct the City Manager and City Attorney to work toward refinement with the understanding of how this might play out so Council will benefit from information when it comes back to Council. This motion was seconded by Councilman Bothwell.

Councilman Bothwell said that the economic impact study has so many qualifications that it renders it meaningless. He said we recently have a legal decision that said property owners cannot be the only voters on annexation and he would trust that the courts would say the same thing about expenditure of taxpayer funds. He felt the 7-cent tax raise is good for downtown and felt it would be good City-wide as there are all kinds of needs across the City. He didn't like carving out one section of the City for a tax increase and possibly coming back to the downtown property owners next year with another tax increase depending on the revaluation. He was also concerned about a non-elected board handing money in the City, citing the Pack Square Conservancy and the Grove Arcade. He felt the elected officials should be accountable.

Councilman Pelly was also concerned about the oversight, particularly when tax dollars are involved. In addition, he was not comfortable with the structure of the BID Board as proposed. However, he did support the BID in principle, but would like it refined.

In response to Councilman Smith, City Manager Jackson outlined several things to enhance service downtown, i.e., established a downtown police patrol, moved the police company storefront into the Haywood Street office, partnered with DARN to upgrade Pritchard Park, established the nuisance court and expanded the community services for graffiti cleanup and putting thousands of hours into those kinds of projects, increased the frequency of trash can pick-up; provided public restrooms on Haywood Street, and invested over $200,000 in doing the

Downtown Master Plan which resulted in clearer standards and better processes for review of proposed developments downtown.

Councilman Smith said that while we are trying to respond to the needs of downtown, when you have this kind of concentration of people, those needs intensify. There are a lot of needs outpacing our ability to keep up. So, as we look at this BID, once we get to a place to move forward, this will be an ongoing collaborative process. He felt it will be important for people to understand the loss/retention around independent businesses in the downtown area. There will be actual benchmarks to measure whether this is working or not. He would like to see a City and County representative on the BID Board, making sure the meetings are open, ensuring that there is someone with homelessness or social work expertise on the BID Board, and making sure the City and County receive reports to make sure that we have the confidence of the taxpayers as far as the finances are being handled. He would also like more clarify on the role of the police department and the ambassadors. He also wanted to see the BID by-laws.

Councilman Davis, downtown property owner, is generally supportive of the BID, however, he does have some concerns. He would like to see the by-laws of the BID Board.

Mayor Bellamy thanked the members of the Downtown Management Committee who have worked for three years to implement what they through Council wanted when we adopted the Downtown Master Plan – to move the BID forward. She also thanked the Parks & Recreation Foundation for the hanging baskets; DARN residents who help maintain the planters in Pritchard Park along with other maintenance in Pritchard Park; the Asheville Downtown Association for their work with Downtown After Five; individuals who help with the Oktoberfest; individuals who help with the Spare Change for Real Change Program; etc. We don't have a staff person dedicated to make sure this happens. The success that we have on the Asheville Redefines Transit is because we have the Transportation Department making sure that the improvements are made that Council wants to see happen. Council is asking the volunteers (and Ms. Vrtunski) to provide all this additional information, without any guarantee Council will vote in favor of it. She didn't think it was fair to burden our volunteers with more work and ask that it be brought back in three months. If we really want our downtown to be improved, we need a staff person to be dedicated to this.

City Manager Jackson said that if it's Council's goal to dedicate a person on a specific job, Council can add a position to the budget. Or, if you would like to give him an opportunity to take the direction he has heard from Council at this meeting, he will get staff input and then report back with a plan to be submitted it to Council within the one week.

Mayor Bellamy felt it was important to have a staff person dedicated to make sure things are being addressed. For those that are opposed to the BID, she urged them to help find some solutions on how to address the cleanliness of downtown. She asked for the following items to be addressed: what will be the role of the police officers, would like to see the budget, there should be a voting member of City Council and County Commissioner, accountability does need to be clarified, make sure that downtown residents are represented on the BID Board in a way that is clear, the BID boundaries should not go all the way to the Tunnel (stop at Charlotte Street), and the need to have a homeless representative or a service provider on the BID Board. She did not think that all of this can be addressed in three months and hoped that Councilman Hunt would be willing to amend his motion to continue the public hearing for an additional three months.

In response to Councilman Hunt, Ms. Griffin felt that the entire interim board is very willing to work on some of these issues and compromise, but she couldn't speak for the entire board. She hoped that the timeframe would be one that the interim Board is also considered on what works for them. She felt three months is a much easier way for them to look at another time commitment than to extend this out for another six months.

In response to Councilman Hunt, City Attorney Oast said that if the information cannot be produced in the three-month timeframe, the public hearing can then be continued again.

At 8:30 p.m., Councilman Smith called the question. This motion was seconded by Councilman Davis and carried unanimously.

The motion made by Councilman Hunt and seconded by Councilman Bothwell to continue the public hearing to September 25, 2012, carried unanimously.

At 8:30 p.m., Mayor Bellamy announced a short break.

**B. PUBLIC HEARING TO CONSIDER A LAND USE INCENTIVE GRANT APPLICATION FOR 155 GLENN BRIDGE ROAD**

**RESOLUTION NO. 12-132 - RESOLUTION APPROVING A LAND USE INCENTIVE GRANT APPLICATION FOR 155 GLENN BRIDGE ROAD**

Community Development Director Jeff Staudinger said that this is the consideration of a resolution approving a land use incentive grant application for 155 Glenn Bridge Road. This public hearing was advertised on June 1, 2012.

Mr. Staudinger said that the owners/developers of 155 Glenn Bridge Road have applied for a Land Use Incentive Grant per the policy adopted by Council on March 8, 2011. This report summarizes their application and reports on eligibility and points.

The 155 Glenn Bridge Road project entails the development of 176 units of rental housing located at the indicated project address in the City of Asheville. No commercial or other mixed use development is cited in the proposal.

The project, as presented to staff, appears to meet the following Eligibility Requirements,

- Equity: A 20% equity contribution is required. The project developers indicate they will contribute 20.4% equity to the project. This includes unreimbursed value of the land, and other expenses.
- Energy Star Certification: The developers indicate the project will achieve Energy Star certification.
- Legal Costs; the developer must agree to assume all legal costs if the Land Use Incentive policy is challenged: The developer has agreed to assume all legal costs if the Land Use Incentive policy is challenged.

The project does not meet the following eligibility criteria:

- Inside city limits, within ¼ mile of designated major highways: The project is located approximately .6 mile from Hendersonville Road, and therefore about ¼ mile outside of the eligible area. The developer has requested a waiver of this eligibility criteria.

*Public Benefit*

The project proposes the following Public Benefit Elements:

- Affordable Housing units with assured affordability at that rent level for a minimum of ten years: 40% of total units (40 points)
- Workforce Housing units with assured affordability at that rent level for a minimum of ten years: *50% of total units* (10 points)
- Green Building/Energy: *Energy Star certified* (5 points)

The project therefore scores 55 points. Based on this score, the project would be eligible for a 5.5 year Land Use Incentive Grant.

The project meets the following 2010-11 Strategic Plan Goals: (1) *Affordable*: Create and preserve affordable rental and homeownership opportunities in Asheville. The project is directly related to the opportunity for public/private partnerships and innovative financing to incentivize affordable housing development; and (2) *Green and Sustainable*: Set and develop a plan for implementing a community reduction goal. The project is being built to Energy Star standards, and will be certified by Energy Star.

*Exemption Request*

The developer has requested an exemption from the eligibility requirement that a project be located within ¼ mile of identified major highways. The project is located .6 miles from an eligible transit route, so slightly more than ¼ mile from the eligible area boundary. It is, however, in an area identified as "Location Efficient" in the Center for Neighborhood Technology study of location efficiencies in Asheville; although public transportation at or closer to this location is not in the Transit Master Plan. The developer notes that the project is located close to retail employment opportunities.

Fiscal Impact: Estimated maximum value of Land Use Incentive: The current assessed value of the property is $1,062,500. The developer's estimate of completed project taxable value is $23,881,118. The current annual city tax, based on current assessed value, is $4,462.50. The annual estimated city tax post completion, based on the developer's estimate is $100,300.70. Thus, the estimated annual Land Use Incentive Grant would be $95,838.20, the exact amount to be determined by the length, in years, of the grant award, and the actual assessed value of the development upon completion. If approved for 5.5 years, the estimated Grant would be $527,110.10. The estimated annual value of direct services provided by the City to the development (primarily police and fire response) is approximately $100,000.

The estimated amount of fees payable for Zoning Permit, Building Permit, Driveway Permit, Grading Permit, Plan Review Fees and Water Service Connection Fee is $108,632. The value of each 10% of the fee rebate would be $10,863.20. The exact amount would be determined by the percentage of fee rebate awarded as part of the Land Use Incentive Grant. If approved at the 55 point level, the fee rebate would be $59,747.60.

The Housing and Community Development Committee has reviewed this application and recommends that Council act upon it.

Mayor Bellamy opened the public hearing at 8:57 p.m.

Mr. Morosani clarified that the project will be 40% affordable housing and 60% workforce housing.

Mayor Bellamy closed the public hearing at 8:58 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Hunt moved for the adoption of Resolution No. 12-132, waiving the requirement that the project be within ¼ mile of a major transportation corridor. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34– PAGE 412**

**C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE APPROVED CONDITIONAL USE PERMIT FOR HARMONY VILLAGE, LOCATED AT MYRA PLACE**

**ORDINANCE NO. 4089 - ORDINANCE AMENDING A PREVIOUSLY APPROVED CONDITIONAL USE PERMIT FOR HARMONY VILLAGE, LOCATED AT MYRA PLACE, FOR A REDUCTION TO THE NUMBER OF APPROVED UNITS, A REDESIGN OF THE SITE, AND PROPOSAL OF THREE NEW SINGLE-FAMILY LOTS, AND A REQUEST FOR A MODIFICATION TO ALLOW ENCROACHMENTS INTO A SETBACK**

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

Mayor Bellamy and Councilman Davis disclosed that they were on City Council when this project was first before Council and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 9:01 p.m.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of an amendment to the approved Conditional Use Permit for Harmony Village, located at Myra Place, for a reduction to the number of approved units, a redesign of the site, and proposal of 3 new single-family lots, and a request for a modification to allow encroachments into a setback.

The applicant is requesting an amendment to the previously approved plan (CUP # 07-6306) to reduce the number of units and alter the number of lots / building configuration on an existing site (City Exhibit 3 – Location Map and Site Plan).

The project site consists of a 1.89 acre parcel located at Myra Place, Old Haywood Road and East Starnes Cove Road and is zoned RS-4. Surrounding properties are zoned RS-4 with Highway Business (HB) adjacent to the south. This site has been partially developed according to the previous approval.

The project, previously known as Myra Place, was approved by City Council on March 25, 2008, under density bonus provisions which allowed for additional units when a proposal incorporated exceptional development features and affordability. The proposal included 12 units throughout four buildings all centered around a common open space, site landscaping, a 5 foot sidewalk along Old Haywood Road, individual driveways and a common parking area. Twenty percent of the units were to be dedicated at as affordable, allowing for a 150% density bonus above the base zoning (8 units).

The site plan was slightly modified after Council approval to rearrange the building placement, reduce the number of driveway openings and provide two common parking areas.

Construction started on this site but stalled. Two duplex structures exist at about 90 percent completion.

The current owner (First Bank) is proposing to reconfigure the site with the total number of units reduced from twelve to seven. The partially-built duplexes (and associated parking areas) will be completed with each building on its own separate parcel. There are no plans for additional building construction with this proposal. Three additional single-family lots would be created and made available for sale - one of which fronts only on Old Haywood Road. The other parcels are all through-lots with additional frontage on Myra Place.

- Reduction from one parcel containing multi-family development to five individual parcels
- Change from a mix of duplexes and triplexes to duplexes and single-family on their own individual lots
- Reduction from 12 units to seven
- Change from individual driveways and common parking lots to primarily individual parking
- Significant reduction in required landscaping (property line buffer, building impact, parking lot landscaping, street trees and open space are no longer required – however some has been included).

*Parking and Access* - The proposal includes an individual driveway into each of the five lots. There will be a small, four-space parking area for each duplex constructed at this time (two spaces for each unit) and the single-family access will be established at a later date by the subsequent property owners.

*Sidewalks* - Old Haywood Road is identified as a needed linkage; however, sidewalk construction would not be required for a development with this reduced number of units. An easement for future construction will be provided. No sidewalks are provided or required along Myra Place.

*Landscaping* – Landscaping requirements from the previous multi-family approval would not be applicable under this revised proposal due to the reduced scale; however some minimal landscaping will be included. Duplexes in the RS-4 zoning district are considered to be a Use By Right, Subject to Special Requirements and one of those requirements is screening the parking area from adjacent single-family uses (Type A 20' buffer). Since this proposal is amending a previous approval, the USSR standards are not necessarily applicable however this screening will be provided. Additionally, street trees along Old Haywood Road will be included.

*Modification* – Parking is not permitted within any required setback but the plan shows a small portion of both parking areas encroaching. This modification will need to be approved by City Council.

This project was approved with conditions by the Technical Review Committee on April 16, 2012. No opposition has been received. As an amendment to a previously approved Conditional Use Permit, review by the Planning & Zoning Commission is not required.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposed use and development of the land is compatible with the natural features and topography of the site. The parcel was graded with the (stalled) construction and this proposal will complete the work at either end of the site and return the rest of the area to a re-graded, seeded/mulched status until further developed. There are no significant topographic features on the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The proposed residential use is compatible with the surrounding residential neighborhood and should not injure the value of nearby properties. Completing the construction and closing out a stalled construction site should benefit the neighborhood.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The proposed duplexes and single-family lots may be more compatible with the surrounding neighborhood than the original, higher-density development planned for this site.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   This downsized proposal does not conflict with any policies held by the City. The original plan may have been more aligned with objectives adopted by City Council which encourage higher-density and affordable residential projects, however, this proposal provides infill residential development and closes out a stalled construction site – both of which are benefits to the City.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   This site is located just off I-240/Patton Avenue, which places the project in an easily accessible location by car and Asheville transit (old rt. 15 – new W3). The project has been reviewed by the Technical Review Committee and has been found to have adequate access to infrastructure.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

There is no traffic congestion or traffic hazard anticipated as a part of this proposal.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- This action will allow for an open, stalled construction site to be closed-out.
- The proposed development will complement the existing residential fabric of the neighborhood.

Cons:

- The amendment does not include any of the affordable or exceptional design characteristics in the original, higher-density proposal.

Staff recommends approval of this amendment to the previously approved Conditional Use Permit, reducing the scale and configuration of the previous development. This recommendation includes approval of the proposed modification to allow parking within required setbacks as shown on the plans.

After rebuttal, Mayor Bellamy closed the public hearing at 9:03 p.m.

Councilman Smith found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4089, amending the approved Conditional Use Permit for Harmony Village, located at Myra Place, for a reduction to the number of approved units, a redesign of the site, and proposal of 3 new single-family lots, and approval of the requested modification to allow encroachments into a setback, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; and (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards. This motion was seconded by Councilman Davis and carried unanimously.

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**D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE APPROVED CONDITIONAL ZONING MASTER PLAN FOR HUNT HILL APARTMENTS, LOCATED AT 56 HUNT HILL PLACE WITH A MODIFICATION REQUEST**

**PUBLIC HEARING TO CONSIDER THE REZONING OF AN AREA IN THE VICINITY OF 55 HUNT HILL PLACE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING TO INSTITUTIONAL DISTRICT**

**ORDINANCE NO. 4090 - ORDINANCE TO AMEND THE CONDITIONAL ZONING TO THE APPROVED CONDITIONAL ZONING MASTER PLAN FOR HUNT HILL APARTMENTS, LOCATED AT 56 HUNT HILL PLACE WITH A MODIFICATION REQUEST**

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**ORDINANCE NO. 4091 - ORDINANCE TO REZONE AN AREA IN THE VICINITY OF 55 HUNT HILL PLACE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING TO INSTITUTIONAL DISTRICT**

Regarding the public hearing on the conditional zoning amendment, Urban Planner Julia Fields said that this is the consideration of an ordinance to amend the approved conditional zoning master site plan for Hunt Hill Apartments, located at 56 Hunt Hill Place, for a redesign of the site and buildings and also a new pool and clubhouse addition with a modification request to the setback. This public hearing was advertised on June 1 and 8, 2012.

Ms. Fields said on June 24, 2008, the Asheville City Council reviewed and approved the conditional zoning of 9.58 acres of property (from RM8 and Institutional to RM16CZ) located off of Hunt Hill Place and Ardmion Drive in order to allow for the construction of a 180-unit multi-family development, to be named Hunt Hill Place. The subject property for this development was primarily the former location of the McCormick Heights Apartments which were demolished prior to the adoption of the original 2008 Conditional Zoning. The project site also included a small portion (1.06 acres) of City of Asheville property. At that time a land exchange with the City was anticipated with the 1.06 acres of City property becoming part of the Hunt Hill development in exchange for the City receiving .85 acres for future park development along with additional consideration. The development received permits but was never completed.

A new developer, Hunt Hill Holdings, LLC (Chip Kassinger), has obtained the property and wishes to develop Hunt Hill Apartments with the same number of dwelling units (180) but with revisions to the circulation/access patterns, the location/placement/number of buildings on the property, the addition of a new .85 acre property, and an adjustment deleting the land exchange with the city. The buildings are to be stick-built as opposed to the modular construction proposed in the former development.

The previously approved land exchange will not be necessary under the new proposal as the developer plans to reconfigure the location of buildings and access points so only the two parcels owned now by Hunt Hill Holdings, LLC will be needed. The 1.06 acres of City-owned property made a part of the original conditional zoning approval is the subject of a separate rezoning process. The new proposal includes the .85 acres that were originally proposed to be given to the City.

A small portion of the property is in Zone A subject to the City's Steep Slope regulations. Under the regulations, the allowable number of units in the Zone A portion zoned RM16CZ is 30 units. The allowable density for the remainder of the project, again if zoned RM16CZ, is 117 units – a total of 147 units. Both the previous development plan and the current proposal show 180 units, a number that will necessitate an exceptional development density bonus for the 33 additional units. This is an 18.3% bonus. The previous approval was for a 17% bonus. To receive this density bonus, the developer proposes that ten percent (10%) of the development (18 units) be affordable, meeting the City's standards.

The developer also proposes a number of "green" features in the development. Construction, appliances, etc. will be Energy-Star certified. They are also looking at providing car charging stations and utilizing rain gardens as possible.

The new proposal would contain five buildings instead of four with a new mix of 107 studio or one-bedroom units and 73 two-bedroom units (previously there were 22 three-bedroom units and 168 one and two-bedroom units proposed).

The other significant change concerns access. The previous plan showed access only as it now exists off Hunt Hill Place and Ardmion Drive, but the amended proposal shows additional access from Carroll Drive. Additionally, circulation is now to be throughout the

development; whereas previously two buildings were accessed off of Ardmion Drive and two were accessed off of Hunt Hill Place. With these changes land disturbance is decreased under the new proposal from 7.48 acres to 7.04 acres.

A modification is needed for the side setback for Building 2. At one small point this building encroaches approximately 10 feet into the required 40 foot setback.

At a meeting on April 16, 2012, the Technical Review Committee approved this conditional zoning amendment with conditions. Since that time the applicant has submitted revisions addressing many of the concerns.

At a meeting on May 2, 2012, the Planning and Zoning Commission voted 6-1 to recommend approval to the Asheville City Council with the conditions as proposed in the staff report and with the following additional conditions:

- That the dumpster(s) will be distributed across the site looking at better access and with attention to the distance from Ardmion Drive and with attempt to direct away from Hunt Hill Place.
- That the green features as listed/provided by the developer be provided.
- That a 20 foot buffer be provided behind the RM8 zoned properties containing single-family homes along Edgehill Road and Carroll Avenue.
- That a signal warrant analysis be conducted for the intersection of South Charlotte Street and Martin Luther King, Jr. Drive assessing current conditions. This study shall be completed prior to review at City Council.
- That 12 months from the issuance of the last building certificate of occupancy on the project, but before the final site certificate of occupancy, that a second signal warrant analysis be completed. If the first traffic impact study determines that a traffic signal is warranted at the intersection of South Charlotte Street and Martin Luther King, Jr. Drive, this second study would not be needed. If however, the first study does not show such a signal is warranted but the second study shows that the signal is warranted, then the developer will pay for the signal at that intersection if approved by NCDOT.

The developer met with residents of the East End/Valley Street Neighborhood Association following the Planning and Zoning Commission meeting to address their concerns. He has agreed to an additional compactor location behind the clubhouse parking area and is meeting with residents to show them how the compactors operate. He has agreed to the buffer behind the properties along Edgehill and Carroll Avenue.

The signal warrant analysis requested by the Planning and Zoning Commission has been completed and indicates that the signal at Charlotte Street and Martin Luther King, Jr. Drive is warranted at present. This information will be presented to NCDOT and means that, under the Planning and Zoning Commission recommendation, this signal should not be the responsibility of the developer of the apartments.

Confirmation concerning the entrance on Carroll Avenue is pending with Tried Stone Missionary Baptist Church. Staff recommends that the project be approved with an additional condition that either the Carroll Avenue access be completed as shown or that a new traffic impact analysis be conducted and brought back for review by staff and the Asheville City Council.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

The project, if approved, must meet all the technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications Manual. The developer has been working closely with City staff to ensure compliance.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The developer is working with the existing condition of the site, siting the buildings utilizing the existing impervious area. They are in compliance with the City's steep slope regulations.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The project site abuts institutional facilities and parkland and should provide an appropriate transition to the also adjacent single-family homes. They are proposing buffering and other enhanced landscaping which should improve the site which has little significant vegetation now.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The proposed project does show a residential development with greater density than is found in the surrounding area. However, its proximity to an active recreation facility and central location in the City makes this an appropriate transition to less dense housing found in the area. The project site previously served as a 100 unit housing community of seventeen (17) two-story buildings.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The proposed use supports the 2025 goals and Council vision as follows:
   1. Supports the goal of pursuing compatible infill development.
   2. Supports the goal of promoting the use of green building techniques.
   3. Supports the goal of permitting more intense development and density in areas with appropriate infrastructure.
   4. Supports the goal of providing affordable housing.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The use as proposed has three means of access to the project which make the traffic less concentrated than previously proposed as it disseminates through the surrounding neighborhood. Transit access is only a block away on Martin Luther King, Jr. Drive. TRC raised no concerns over the provision of services.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The traffic engineer has reviewed the project and all concerns have been or are being addressed.

Pros:

- This project supports the City of Asheville's goal of pursuing higher density infill development.
- This project proposes a minimum affordable housing component of ten percent (18 units).
- This project incorporates green building strategies in construction.

Cons:

- The project has a greater density than the surrounding residential development.
- Access to the project is via small residential streets.

In addition ot the Standard Conditions, the following additional Conditions Suggested by Staff: (1) That 10% (18) of the units be affordable meeting City standards; (2) That the Carroll Avenue access is completed as shown or that a new traffic impact analysis is conducted and brought back for review by staff and the Asheville City Council; and (3) that the developer work with City staff to iron out the issues with respect to the access to the City's park property through the developer's property and grant an easement is necessitated.

Additional Conditions Suggested by the Planning and Zoning Commission: (1) That the dumpster(s) will be distributed across the site looking at better access and with attention to the distance from Ardmion Drive and with attempt to direct away from Hunt Hill Place; (2) That the green features as listed/provided by the developer be provided: (3) That a 20 foot buffer be provided behind the RM8 zoned properties containing single-family homes along Edgehill Road and Carroll Avenue; (4) That a signal warrant analysis be conducted for the intersection of South Charlotte Street and Martin Luther King, Jr. Drive assessing current conditions. This study shall be completed prior to review at City Council; and (5) That 12 months from the issuance of the last building certificate of occupancy on the project, but before the final site certificate of occupancy, that a second signal warrant analysis be completed. If the first traffic impact study determines that a traffic signal is warranted at the intersection of South Charlotte Street and Martin Luther King, Jr. Drive, this second study would not be needed. If however, the first study does not show such a signal is warranted but the second study shows that the signal is warranted, then the developer will pay for the signal at that intersection if approved by NCDOT.

She reiterated that the signal warrant analysis requested by the Planning and Zoning Commission has been completed and indicates that the signal at Charlotte Street and Martin Luther King, Jr. Drive is warranted at present. This information will be presented to NCDOT and means that, under the Planning and Zoning Commission recommendation, this signal should not be the responsibility of the developer of the apartments. Conditions 4 and 5 by the Planning & Zoning Commission do not need to be listed as conditions.

Regarding the public hearing on the rezoning of 55 Hunt Hill Place, Urban Planner Julia Fields said that this is the consideration of an ordinance to rezone an area in the vicinity of 55 Hunt Hill Place from RM-16 Residential Multi-Family High Density District/Conditional Zoning to Institutional District. This public hearing was advertised on June 1 and 8, 2012.

Ms. Fields said that on June 24, 2008, the Asheville City Council reviewed and approved the conditional zoning of 9.58 acres of property (from RM8 and Institutional to RM16 CZ) located off of Hunt Hill Place and Ardmion Drive in order to allow for the construction of a 180-unit multi-family development, to be named Hunt Hill Place. The development received permits but was never completed.

A new developer, Hunt Hill Holdings, LLC (Chip Kassinger), has obtained the property and wishes to develop Hunt Hill Apartments with the same number of dwelling units (180) but with revisions to the circulation/access patterns and the location/placement/number of buildings on the property.

As part of the original development proposal a land swap was approved but never carried out between the City and the original developer. The developer was to receive 1.06 acres of currently unused park property (part of Mountainside Park, zoned Institutional) and the City would receive .85 acres for future park development. The new developer plans to use only property that is owned by Hunt Hill Holdings, LLC and the proposed amended conditional zoning approval shows no development involving the 1.06 acres still owned by the City but zoned RM16CZ.

The City wishes to have this City-owned property revert back to the previous zoning of Institutional and staff is bringing forward this rezoning application in order to effectuate this rezoning. The property that is the subject of this rezoning request is located just south of the proposed Hunt Hill Apartments development site and is vacant except for a small portion which contains a drive entrance to Mountainside Park.

At a meeting on May 2, 2012, the Asheville Planning and Zoning Commission reviewed and unanimously recommended approval of this rezoning to Asheville City Council. No one spoke on this matter.

Pro:

- Zones a piece of City-owned property with the same zoning designation as the remainder of the property.

Con:

- None noted.

The staff finds the request to be reasonable and recommends approval of this rezoning request. At a meeting on May 2, 2012, the Asheville Planning and Zoning Commission reviewed and unanimously recommended approval of this rezoning to Asheville City Council.

Mayor Bellamy opened the public hearing at 9:17 p.m.

Mr. Chip Kassinger, developer, spoke in support of the project stating that they are really focused on energy efficiency and noise. They are saving a lot of trees. He said that they are continuing to work with Mr. Proctor at Tried Stone Missionary Baptist Church for an agreement; however, the Church needs to approve the agreement as a body. He said they have been very good to work with and hoped to be able to work out the agreement soon.

Ms. Mandy Broderick, resident on Hunt Hill Place, felt this is a good space for a development like this and the developer has been open to discussions about any issues the neighbors have. However, there is already a tremendous amount of traffic on Hunt Hill and the traffic study showed that 30% of the traffic would be on Ardmion, 40% on the access through the Church parking lot (Carroll Avenue access), and then 30% on Hunt Hill. She was concerned if the access point on Carroll Avenue is not worked out, then 70% of the traffic will be on Hunt Hill.

Ms. Carmen Ramos-Kennedy hoped that the traffic signal at the intersection of Martin Luther King Jr. Drive and Charlotte Street can be installed quickly.

Mayor Bellamy closed the public hearing at 9:22 p.m.

Traffic Engineer Jeff Moore reiterated that the signal warrant analysis does indicate that a traffic signal at Charlotte Street and Martin Luther King, Jr. Drive is warranted at present. He has forwarded that information to the NDCOT. The NCDOT process takes approximately 6-8 weeks after they do their independent count.

Mayor Bellamy asked that the City draft a letter to the NCDOT to expedite the traffic signal installation at Charlotte Street and Martin Luther King Jr. Drive and that the City's members on the Transportation Advisory Committee urge the NCDOT to make this intersection a top priority as well.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master

plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4090, to amend the approved conditional zoning master site plan for Hunt Hill Apartments, located at 56 Hunt Hill Place, for a redesign of the site and buildings and also a new pool and clubhouse addition with a modification request to the setback, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10 of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with this ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (6) That 10% (18) of the units be affordable meeting City standards; (7) That the Carroll Avenue access is completed as shown or that a new traffic impact analysis is conducted and brought back for review by staff and the Asheville City Council; (8) ) that the developer work with City staff to iron out the issues with respect to the access to the City's park property through the developer's property and grant an easement is necessitated; (9) That the dumpster(s) will be distributed across the site looking at better access and with attention to the distance from Ardmion Drive and with attempt to direct away from Hunt Hill Place; (10) That the green features as listed/provided by the developer be provided: (11) That a 20 foot buffer be provided behind the RM8 zoned properties containing single-family homes along Edgehill Road and Carroll Avenue; and (12) That the City communicate with the NCDOT about the need for the traffic signal at the intersection of Martin Luther King Jr. Drive and Charlotte Street. This motion was seconded by Councilman Davis.

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Mr. Kassinger responded to Councilman Hunt regarding the location of the proposed greenway, noting there is no need for public access across the developer's property to get to the proposed greenway.

There was considerable discussion regarding the third access on Carroll Avenue. Ms. Fields noted that the current approval that is in place only has two access points (180 condominium units). The traffic impact study that has been performed included the Carroll Avenue access. If the agreement with the Church is not reached, a new traffic impact analysis would need to be conducted and brought back for review by staff and the Asheville City Council, knowing that the current approval only had two access points.

Mayor Bellamy was concerned that the Church is not represented at this meeting and she felt it was unfair to pressure the Church to enter into an agreement with the developer. She felt Council would be setting a precedent making the developer have a third party approval for his project to be approved. She felt Council should either approve the project or not, but not make it contingent upon a third party agreement.

City Attorney Oast said that an option would be to approve the project without the Carroll Avenue access, and if the developer does work out that access, the third access would not require an amendment to the conditional zoning thus not requiring the project to come back to Council.

Mr. Kassinger felt the third access is important as that is the best way to access the property. He did not want to pressure the Church, and noted that they do plan on improving the Church's parking lot. He understood that if the third access is not worked out that they will have to do an additional traffic impact analysis.

Mayor Bellamy reiterated that she did not want it to look like we are forcing the Church to make that access happen. She felt this project should stand on its own. She was opposed to setting this kind of precedence, but supported the project because it is a good project, with two or three accesses.

The motion made by Councilman Smith to adopt Ordinance No. 4090 with conditions outlined above and seconded by Councilman Davis carried unanimously.

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Councilman Smith found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4091. This motion was seconded by Councilman Bothwell and carried unanimously.

**F. PUBLIC HEARING REGARDING THE NEW BELGIUM BREWERY/ECONOMIC DEVELOPMENT**

**RESOLUTION NO. 12-133 - RESOLUTION AUTHORIZING AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH NEW BELGIUM BREWING COMPANY INC.**

**RESOLUTION NO. 12-134 – RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH NEW BELGIUM BREWING COMPANY INC. REGARDING CERTAIN PUBLIC INFRASTRUCTURE IMPROVEMENTS**

City Attorney Oast said that this is the consideration of (1) resolution authorizing an economic development incentive agreement with New Belgium Brewing Company, Inc. (herein "New Belgium"), and (2) resolution authorizing certain infrastructure improvements in connection with New Belgium's location in the City of Asheville. This public hearing was advertised on June 1, 2012.

New Belgium is a Colorado corporation that brews and distributes beer. New Belgium proposes to locate a major brewing facility on approximately 20 acres along Craven Street on the west side of the French Broad River, between the Smith-Carrier Bridge on the north, and the West Asheville RiverLink Bridge on the south. The property is currently occupied by a self-storage facility, and was formerly used as the WNC Stockyard, among other uses.

New Belgium is the third largest craft brewer in the United States. The City of Asheville is one of several locations under consideration for New Belgium's east coast facility. In order to encourage New Belgium to choose Asheville, the City staff, working with the State of North Carolina, Buncombe County, and the Chamber of Commerce, assembled a package of economic development incentives and other incentives. The City's incentive package consists of two components: economic development cash grants, and in-kind improvements to public infrastructure on or near the proposed location for New Belgium.

**Economic Development Incentives**: New Belgium is already engaged in design and planning for the proposed Craven Street facility. New Belgium proposes to begin construction in early 2013, to begin production on site in early 2015, and to complete construction and be in full operation by early 2022. The total investment (real property and personal property) is anticipated to be $175 million. The total number of jobs at full production is anticipated to be 130. A substantial number of the jobs will pay at or above the average wage for Buncombe County. The cash grants will be in an amount equal to 80 percent of the taxes paid on the eligible improvements, and will not be made until taxes have been paid. Eligible improvements include real and personal property subject to *ad valorem* tax and located in the City.

The incentive is weighted equally to job creation and investment. To allow for unplanned delays in construction and economic fluctuation, there is a two-year "extended deadline" by which New Belgium must achieve 80 percent of the investment and job creation benchmarks, or the grant amounts are subject to adjustment or "clawbacks" on the basis of the percentage of the jobs or investment benchmark that New Belgium does not achieve. Some of the New Belgium facilities, such as the warehouse and distribution facility, may be located somewhere other than Craven Street, but must be located in the City of Asheville to qualify for the incentive. The total amount of cash grants is anticipated to be $2.1 million over seven years.

**Public Infrastructure**: In addition to the economic development incentive agreement, the City has agreed to make some improvements to the infrastructure in the area of New Belgium's proposed Craven Street location, and on the property itself. The improvements include widening Craven Street and improving some of the intersections approaching the proposed location of the brewery, replacing and enlarging waterlines, and constructing and improving some storm-water facilities. The improvements also include construction of a greenway on New Belgium's property.

The City and New Belgium propose to enter a memorandum of understanding (herein "MOU") outlining responsibility for particular improvements. The improvements and the estimated cost of them are set out in detail in the schedule provided to Council, and will be attached to the MOU and resolution. The City's share of the cost of these improvements is estimated at $2.3 million. Under the MOU, the City will be responsible for funding the improvements it agrees to make. To reduce these costs, the City is seeking grants and other assistance. The City has obtained one grant in the amount of $500,000 from the Golden Leaf Foundation, and has applied for another grant in the amount of $1.1 million from the Economic Development Administration to assist with these improvements, and the State will undertake some of the roadway improvements.

In connection with the public infrastructure improvements, Council is being requested to approve a specific contract for professional services for design work being undertaken for the City and New Belgium in connection with the project. The Staff Report for that contract approval follows this Staff Report. Assuming Council authorizes the expenditures for the infrastructure improvements, consideration and adoption of the resolution for that contract would be appropriate.

This project is consistent with several officially adopted plans for the City. (a) Strategic Operating Plan (2011-12 and 2012-13) supports diversified job growth and business development, partnering in regional economic development strategy, practice sustainable high density infill growth. (b) The project is also consistent with plans for redevelopment of the riverfront.

Pros:

- Potential for $175 million investment and addition to the tax base.
- Potential for creation of 130 jobs, with a substantial number of them at above average wage.
- Capitalizes on the City's growing reputation as a center for craft brewing in the United States.

Con:

- Requires some reprogramming of City's funds.

Adoption of the resolutions authorizing the City to enter into the economic incentive development agreement and the memorandum of understanding regarding the public infrastructure improvements is recommended.

Mayor Bellamy and Council members welcomed New Belgium to the City and thanked them for their investment in our community.

Mayor Bellamy opened the public hearing at 9:56 p.m.

A representative of New Belgium expressed their appreciation for the work of the Economic Development Coalition and City staff on this project. They were happy to be here in Asheville and looked forward to moving forward.

Mayor Bellamy closed the public hearing at 9:57 p.m.

Mayor Bellamy said that members of Council have previously received copies of the resolutions and they would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 12-133. This motion was seconded by Councilman Chris and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 413**

Councilman Pelly moved for the adoption of Resolution No. 12-134. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 414**

**RESOLUTION NO. 12-135 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A COTNRACT WITH COLEJENEST & STONE TO PROVIDE DESIGN SERVICES FOR THE CRAVEN STREET IMPROVEMENTS**

**ORDINANCE NO. 4092 - BUDGET AMENDMENT FOR THE CRAVEN STREET IMPROVEMENTS**

Public Works Director Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to execute a contract with ColeJenest and Stone in the in the amount of $514,221 (and authorization to cover any amendments in the contract not to exceed 10% or $51,422) for the purpose of completing professional design services for the Craven Street Improvements; and the associated budget amendment in the amount of $565,643 to cover the cost of the project.

The City of Asheville is proposing to improve Craven Street from Haywood Road to the Craven Street Bridge. These improvements will include two way vehicular traffic, bike lanes, sidewalk, greenway and regional storm water improvements. Additionally, the City is proposing to improve the intersection at Roberts, Lyman, Depot and Clingman Avenue to allow larger truck vehicles while maintaining or improving pedestrian and bike traffic.

The City solicited proposals from qualified design professionals to perform this work. On April 25, 2012, the City received fourteen proposals. A selection committee consisting of five staff members from the City of Asheville and two from New Belgium Brewery reviewed the proposals and requested interviews with the five most qualified teams.

The selection committee interviewed the five teams on May 7th and May 8th and determined based on qualifications that ColeJenest and Stone was the most qualified to perform the work. ColeJenest and Stone is partnering with several local firms to complete the work. Over 90% of the fee will go to local professionals.

This action complies with the City Council Strategic Operating Plan of Multimodal Transportation in that it will meet the need of increasing the output of sidewalk construction and provide sidewalk in an area that is in need of sidewalk linkage.

Pros:

- Improves a currently narrow roadway into a complete street with bike lanes and sidewalk.
- Provides a new greenway linkage.
- Adds much needed public parking with a low impact development design.
- Improves urban storm water runoff for the watershed.

Cons:

- Project management and contract administration will consume staff time and City funds.

This design cost is estimated at $514,221. The estimated total cost of the project is approximately $2.3 million. The City received a $300,000 grant from the Golden Leaf Foundation and is in the process of applying for an Economic Development Grant from the Department of Commerce in the amount of $1.1 million. The remaining cost of the project will be paid through the Stormwater, Water, and Parking Fund operating funds and General Fund debt proceeds.

Staff recommends City Council (1) authorize the City Manager to execute a contract with ColeJenest and Stone in the in the amount of $514,221 for the purpose of completing professional design services for the Craven Street Improvements including authorization to cover any amendments in the contract not to exceed 10% or $51,422; and (2) adopt a budget amendment in the amount of $565,643 to cover the cost of the project.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 12-135. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 434**

Councilman Smith moved for the adoption of Ordinance No. 4092. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 391**

**G. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING HUNTER APARTMENTS, LOCATED AT 25 & 27 WASHINGTON ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING TO ALLOW FOR THE REMODEL OF TWO EXISTING RESIDENTIAL STRUCTURES INTO TWO DUPLEX STRUCTURES FOR A TOTAL OF FOUR APARTMENTS**

At the applicant's request, Councilman Smith moved to continue this public hearing until July 24, 2012. This motion was seconded by Councilman Davis and carried unanimously.

**V. UNFINISHED BUSINESS:**

**A. ORDINANCE NO. 4093 - ORDINANCE ADOPTING THE 2012-13 ANNUAL OPERATING BUDGET**

Director of Finance and Management Services Lauren Bradley said that this report presents the Fiscal Year 2012/2013 Annual Budget for adoption by City Council.

The Fiscal 2012/2013 Proposed Annual Operating Budget was presented to City Council on April 24, 2012. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Proposed Budget along with a notice of the Public Hearing was published on May 11 and May 18, 2012. City Council conducted a public hearing on the Proposed Budget on May 22, 2012. The Fiscal Year 2012/2013 Budget is balanced with an Ad Valorem tax rate of $0.42 per $100 of assessed value, which represents no change from the current year tax rate. The General Fund budget also includes no appropriation from the City's fund balance. All essential City services are continued in the Budget.

***Technical Budget Adjustments***

The net proposed FY 2012/2013 operating budget presented to City Council on April 24th was set at **$134,113,810**, including a General Fund appropriation of **$89,318,377**. Since the Proposed Budget was presented to City Council, there were three technical adjustments that have altered the total of the budget that is presented tonight for Council adoption.

1) **Changing Together:** After the Proposed Budget was presented to Council, the City received notification that Buncombe County would be renewing the contract with the City of Asheville to act as the coordinating agency for Changing Together, an initiative funded by the North Carolina Governor's Crime Commission. The partnership assists the Asheville Police Department in its work to improve safety in neighborhoods with high crime. Contracts for the Project Director and Project Assistant, in the amounts of $51,060 and $28,000 respectively, will be managed by the City of Asheville and reimbursed by Buncombe County. The total revenue to the City of Asheville will be **$79,060**, with Buncombe County providing $26,665 of that amount as part of the local match for the grant.

2) **Funding for Outside Agencies:** The FY 2012/2013 Outside Agency funding levels that were approved by Council at the May 22, 2012 meeting exceeded the fiscal limits included in the FY 2012-2013 Proposed Budget by **$5,000.** This additional funding was accommodated by increasing the budget for electronic gaming revenue.

3) **Market Based Salary Analysis:** During Council deliberations on the FY 2012/2013 employee salary adjustments, staff proposed the inclusion of **$60,000** in the budget to fund a market based salary study to be completed during the first half of FY 2012/2013. Funding for this one-time expense will come from unexpended capital funds that have accumulated in the General Capital Projects Fund as projects have been completed and come in under budget.

***Budget Adjustments for Salary Options***

Early in the budget process, City Council indicated that its highest priority was investing in employee compensation. The FY 2012/2013 proposed budget that staff brought forward to Council on April 24 included a 1% cost of living adjustment (COLA) for all city employees that would become effective July 2012. Staff also proposed that if the General Fund achieved better than budget performance in the current fiscal year, Council consider a one-time bonus for employees in November 2012 after completion of the annual financial audit. During budget deliberations, Council directed staff to provide options for additional investments in employee compensation. Staff outlined two options for Council at the June 5th budget worksession. Those two options are presented for Council's consideration tonight as part of budget adoption. The financial impact of each option is discussed below. Staff has prepared two budget ordinances that reflect these salary options.

1) **Additional 1% COLA (2% Total) effective July 2012 with possible one-time bonus after audit completion:** The cost in the General Fund of an additional 1% COLA for all employees is approximately **$460,000.** To fund this expenditure, staff is proposing to 1) increase the FY 2011/2012 sales tax projection, which provides another $300,000 in revenue; and 2) appropriate an additional $160,000 from unexpended capital funds to fund two projects that were previously funded with General Fund recurring revenue. As noted above, under this option, staff would recommend that Council revisit employee compensation after the annual audit is completed in November and consider a one-time bonus to employees based on FY 2011/2012 fund balance results. However, the one-time bonus would be considered as a mid-year budget amendment and would not be adopted as part of the budget ordinance currently under consideration.

2) **Additional 2% COLA (3% Total) effective July 2012:** The cost in the General Fund of an additional 2% COLA for all employees is approximately **$920,000.** To fund this expenditure, staff is proposing the following budget changes: 1) increase the FY 2011/2012 sales tax projection which provides another $300,000 in revenue; 2) appropriate an additional $260,000 from unexpended capital funds to fund three projects that were previously funded with General Fund recurring revenue; 3) assume an attrition level of 1.25% as opposed to the 1.00% attrition level that was included in the Proposed Budget; and 4) reduce planned expenditures for the Housing Trust Fund, form based planning, and the Economic Development Coalition by a total of $320,000. Staff is recommending that funding for these three programs be revisited after the annual audit is completed in November and possibly restored with a fund balance allocation. However, the one-time allocation would be considered as a mid-year budget amendment and would not be adopted as part of the budget ordinance currently under consideration.

This action complies with the Fiscal Responsibility focus area of City Council's Strategic Operation Plan: Operate the City of Asheville's organization to the highest levels of fiscal responsibility.

Pros:

- Ensures City's compliance with North Carolina General Statutes that require local governments to adopt a balanced budget ordinance by July 1 of each year.
- General Fund Budget is balanced with no tax rate increase or fund balance appropriation and all essential City services are continued.

Cons:

- A revenue shortfall could occur in FY 2012/2013 if sales tax estimates in the current year are not realized.
- The FY 2012/2013 budget utilizes one-time unexpended capital funds that could be used for other projects.

As noted above, the Proposed FY 2012/2013 General Fund budget is balanced with no property tax rate change and no fund balance appropriation. The amount currently available in unexpended capital funds totals $697,000. As part of the FY 2012/2013 Proposed Budget, staff recommended allocating $275,000 in previously unexpended capital funds to the CIP budget, and those funds were allocated to the capital projects identified in the Proposed Budget. Depending on which salary option Council approves, the budget will include the appropriation of somewhere between $220,000 and $320,000 in unexpended capital funds above and beyond the $275,000 that was already included in the Proposed CIP.

Staff requests that Council review the FY 2012/2013 Annual Operating Budget, including the changes noted above, and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance.

City Manager Jackson clarified that Option 1 leaves the door open for Council to consider, after the audit is complete and revenue pictures are better understood, an increase to the COLA and a budget amendment at that time, rather than the one-time bonus. Ms. Bradley responded that is correct, if there is a recurring revenue sources to fund additional COLA's.

Councilman Smith hoped that we can find ways to recommit ourselves to various priorities, not only staff, but the Housing Trust Fund, expanding transit services, resurfacing streets, adding bike lanes, etc.

Councilman Smith moved for the adoption of Ordinance No. 4093, with Option 1, with the understanding that we further study staff compensation in an effort to achieve parity and as the audit is complete and revenue pictures are better understood, then further adjustment to staff salaries. This motion was seconded by Councilman Davis.

Councilman Bothwell supported Option 2.

Councilman Pelly's understanding of Option 1 was a 2% COLA July 1 and then at the end of the year in November we see what we have in the way of additional funds for either a one-time bonus or perhaps an additional 1% COLA. If the funds are available in November, he supported the additional 1% COLA for a total 3% COLA. If we don't have the $460,000 for the additional 1% COLA, then he supported a one-time bonus for employees below the median income.

Councilman Hunt supported Option 1 as stated by Councilman Smith.

Councilman Davis supported Option 1 as well and hoped that we could add the additional 1% COLA near the end of the year.

Mayor Bellamy's preference was Option 2, but thanked the Council from moving from 1% to at least 2% with consideration of an additional 1% in November. She felt staff deserves 3%.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

The motion made by Councilman Smith and seconded by Councilman Davis carried on a 5-1 vote, with Councilman Bothwell voting "no".

**ORDINANCE BOOK NO. 27 – PAGE 393**

**B. MOTION ADOPTING THE PLANNING & ZONING COMMISSION APPONITMENT PROCESS**

Councilman Bothwell moved to approve the 2012 appointment process for the Planning & Zoning Commission, with a request that City Clerk Burleson provide Council the responses to the essay questions as soon as possible. This motion was seconded by Councilman Hunt and carried unanimously

Councilman Davis asked that City Clerk Burleson provide Council with the essay questions previously compiled by the Council for the last vacancies.

In response to Councilman Pelly, Councilman Smith said that the two seated members on the Planning & Zoning Commission will also be asked to complete the essay questions, but in honor of their current service to the Commission, they will have automatic interviews.

## VI. NEW BUSINESS:

### A. MOTION AUTHORIZING CITY STAFF TO PREPARE AND RELEASE A REQUEST FOR QUALIFICATIONS FOR A COMPREHENSIVE TRAFFIC ENGINEERING ANALYSIS ALONG THE CHARLOTTE STREET CORRIDOR

Councilman Bothwell moved to reschedule this item until June 26, 2012. This motion was seconded by Councilman Pelly and carried unanimously.

### B. RESOLUTION NO. 12-136 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LICENSE AGREEMENT WITH USCOC OF GREATER NORTH CAROLINA, LLC FOR ANTENNAS AND RELATED EQUIPMENT AT 57 CRESTWOOD PLACE, ARDEN, N.C.

Director of Information Technology Services Jonathan Feldman said that this is the consideration of a resolution authorizing the Mayor to execute a License Agreement with USCOC of Greater North Carolina, LLC for antennas and related equipment at 57 Crestwood Drive, Arden, NC.

In 1987, the City of Asheville entered into a lease agreement with the United States Cellular Corporation of North Carolina for City owned property at 57 Crestwood. Under this lease agreement, the United States Cellular Corporation constructed a cellular tower on the premises in exchange for the right to operate antennas and related equipment on the tower and adjacent premises for a period of 20 years. At the end of the twenty year period in 2007, the lease allowed the tenant to extend the term for an additional 10 years for a rental of $200 per month. The current lease has approximately five years remaining in its final term.

At this time, the surviving entity of the United States Cellular Corporation, known as USCOC of Greater North Carolina LLC, has requested an equipment upgrade for the antennas on the tower. Rather than perform an amendment to the lease agreement dated 1987, staff proposed that USCOC enter into a new agreement based on the following terms:

The new term of the License Agreement will be five (5) years with one renewal period of five (5) years. The annual License Fee is based on the initial rate of $30,000 plus 3% annual increases. The proposed License Agreement will enable USCOC to install 3 additional panel antennas to the current loading with corresponding coaxial lines connecting to ground equipment. A tower analysis is required by the license agreement to assure that the new installation does not interfere with other tenants and that the tower can withstand the loading. These facilities are separately metered and the tenant will continue to pay for utility services.

The initial rate was determined by gathering and comparing rate structures used by other municipalities across the state, including the Cary, Hickory, Charlotte and others. Formal findings were reviewed and endorsed by the Council's Planning and Economic Development Committee on August 20, 2008. Results indicate that base fee of $30,000 per annum represents fair market value for this type of installation.

The Notice of Intent to enter into a License Agreement with USCOC of Greater North Carolina LLC was published on June 1, 2012, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested.

This action complies with the City Council Strategic Operating Plan in that strategic tower asset management, through the proper management of license agreements, presents the City with revenue enhancements. These revenue enhancements underwrite a cost savings plan for the City's own telecommunication operations and as such, promote fiscal responsibility.

Pros:

- Enhanced revenue through the license fee income to underwrite City's telecommunications operations

Cons:

- None

The City will receive $30,000 in revenue under the first year of the agreement, with 3% increases each year thereafter.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute the license agreement with USCOC of Greater North Carolina LLC on behalf of the City of Asheville.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 12-136. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 435**

**C. RESOLUTION NO. 12-137 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PARTNERSHIP AGREEMENT BETWEEN AC ENTERTAINMENT AND THE U.S. CELLULAR CENTER FOR 2012 MOOG FEST**

Director of Finance and Management Services Lauren Bradley said that this is the consideration of a resolution authorizing the city manager to enter into a partnership agreement between AC Entertainment and the U.S. Cellular Center for 2012 Moog Fest.

AC Entertainment, in cooperation with the Moog Foundation and Moog Music, annually produces Moog Fest, a multiple-day festival featuring multi-faceted cultural experiences. Moog Fest has been hailed in national and international publications as a world-class destination event. A portion of the proceeds of Moog Fest benefit the Moog Foundation, which is developing a Bob Moog Museum dedicated to the work of the legendary visionary. The main venue for Moog Fest is the U.S. Cellular Center.

AC Entertainment has proposed that the U.S. Cellular Center, which has had a co-promotional agreement in place for the previous Moog Festivals, consider entering into a partnership agreement for the event. The terms of the agreement include:

- Net revenues (revenues less expenses) earned by the promoter, including ticket sales and sponsorship revenue, be split evenly with the U.S. Cellular Center, and;
- Net concessions revenue and all other gross revenues earned by the U.S. Cellular Center be split evenly with AC Entertainment.

The 2012 proposal is different from previous agreements in two ways. First, it proposes that the U.S. Cellular Center share all categories of revenue, including its facility fee and concessions recovery fee, which have not been shared before. Second, it proposes that the U.S. Cellular Center receive half of any net profit earned by AC Entertainment.

Ashley Capps, the President of AC Entertainment noted, "The principle behind the deal structure that we have proposed is important. By sharing 50/50 in all revenue streams, we align everyone's interests in the spirit of working together for a common goal and mutual success. This is the heart of our proposal." According to the promoter, the proposal is structured so that both parties have a financial incentive to manage the event as efficiently and profitably as possible.

Financial Analysis:

**Moog Fest 2010**

The U.S. Cellular Center had a net profit (revenues less direct expenditures) of $105,719 for Moog Fest 2010. Under the terms of the 2010 agreement, the U.S. Cellular Center split half of its net concessions revenue with AC Entertainment. No other revenue streams were shared. AC Entertainment was responsible for reimbursing the U.S. Cellular Center for all direct expenses, which include building costs, labor, and other fees.

**Moog Fest 2011**

In 2011, the U.S. Cellular Center did not split concessions revenue with AC Entertainment, and AC Entertainment was not responsible for reimbursing the U.S. Cellular Center for direct expenses. The U.S. Cellular Center's financial performance for Moog Fest 2011 is summarized below:

| | |
|---|---|
| U.S. Cellular Center Revenue | $137,013 |
| U.S. Cellular Center Direct Expenses | ($71,945) |
| U.S. Cellular Center Net Profit (Loss) | $65,069 |

**Moog Fest 2012**

AC Entertainment has proposed that net concessions revenue and all other sources of gross revenue collected by the U.S. Cellular Center be split in half with AC Entertainment. In return, AC Entertainment would split any net profit earned by the promoter on the event with the U.S. Cellular Center. AC Entertainment developed a revenue projection for the U.S. Cellular Center based on the terms of its partnership proposal, which is included below in the summary below:

| | |
|---|---|
| U.S. Cellular Center Revenue (50%) | $68,401 |
| Promoter's Net Revenue (50%) | $99,987 |
| U.S. Cellular Center Direct Expenses | ($71,945) |
| U.S. Cellular Center Projected Net Profit (Loss) | $96,443 |

Using AC Entertainment's financial assumptions, and assuming the U.S. Cellular Center's expenditures are roughly the same as 2011, the Center would have a net profit of $96,443 for the 2012 event. If the promoter does not experience positive net revenue, the U.S. Cellular Center will likely break even or experience a net loss on the event. This scenario is illustrated below.

| | |
|---|---|
| U.S. Cellular Center Gross Revenue (50%) | $68,401 |
| Promoter's Net Revenue (50%) | $0 |
| U.S. Cellular Center Direct Expenses | ($71,945) |
| U.S. Cellular Center Net Profit (Loss) | ($3,544) |

In conclusion, by agreeing to split all sources of revenue, the U.S. Cellular Center has the opportunity to participate in the promoter's potential positive financial performance; at the same time, should the promoter fail to generate a net profit, the U.S. Cellular Center could experience a loss. By entering into the partnership agreement, the Center is agreeing to assume a greater

financial risk in the event with the potential to realize a financial reward. However, if the promoter fails to achieve a net profit on the event, the U.S. Cellular Center will also experience a net loss. As a result, the Civic Center Fund would either have to exceed revenue projections for other events during the year or anticipate a greater financial subsidy from the General Fund at year end.

Pros:

- Structure of the agreement incentivizes both parties to maximize profitability of the event.
- Performance driven agreement that provides an opportunity to participate in the promoter's net profit for the event, if one is achieved.
- Potential to return the event to profitability experienced in 2010.
- The event supports economic impact in the form of hotel sales and occupancy taxes, retail and sales tax generation.

Cons:

- Requires the City to split all categories of revenue with the promoter; promoter is not required to pay for any of the U.S. Cellular Center's direct expenses.
- City staff does not have access to Moog Fest's financial information (budget to actuals) from past events to validate the projections included AC Entertainment's pro forma. In addition, other variables, like changes in the event structure year-over-year, make it difficult to project how likely the promoter will be in achieving forecast financial performance.
- The U.S. Cellular Center has limited influence on the promoter's revenue and expenses related to the event.
- If the promoter is unable to achieve a net profit on the event, the U.S. Cellular Center will likely experience a loss on the event.

The City Council's Strategic Operating Plan, Fiscal Responsibility Category, has a goal to review analysis of revenue streams to identify opportunities for revenue diversification.

The financial performance of this event impacts the U.S. Cellular Center's ability to meet budgeted revenue projections for the year. The facility's financial performance for the year directly impacts the level to which the General Fund must support the U.S. Cellular Center's operations. Using AC Entertainment's revenue projections, the U.S. Cellular Center could experience a net profit as much as $96,443 for Moog Fest 2012. Under the worst case scenario, if the promoter fails to achieve a net profit on the event, the U.S. Cellular Center would lose approximately $3,544 on the event.

If City Council approves entering into this partnership agreement, staff would recommend that the 2012 financial results be presented to the City Council Finance Committee after the event to evaluate if this type of structure is a viable partnership model for future Moog Fest events. Staff also recommends that the U.S. Cellular Center be listed as an event partner in all promotional material and advertising for the event.

In response to Councilman Hunt, Councilman Davis said that the Civic Center Commission did review this request and acknowledged how AC Entertainment brings quality entertainment to the U.S. Cellular Center; however, they feel they would be stepping outside the guidelines that they normally work in.

In response to Councilman Hunt, Mr. Bryan Benson, representing AC Entertainment, said that keeping this agreement at a 50/50 partnership and throwing all the ancillary revenue streams into the pot, including the facility fee and the concessions recovery fee, is integral to keeping this as a complete partnership agreement between AC Entertainment and the U.S. Cellular Center. That is how they like to operate with all their partners across the country in all the buildings they do business in. They are not asking for anything different than they would normally get out of other buildings. Moog Fest is set up to being complete partners with the U.S. Cellular Center by

sharing all of their revenue streams as well as then having the U.S. Cellular Center share in all of their revenue streams.

When Councilman Hunt asked what would happen if the U.S. Cellular Center did not share in all of their revenue streams, Mr. Benson said they would continue to work with the staff of the U.S. Cellular Center, the Civic Center Commission and City Council to come up with alternative solutions to keep this as a 50/50 partnership agreement and keep the spirit of that agreement in place.

In response to Councilman Hunt, Ms. Bradley said that did believe this is a standard in the industry where co-promotional agreements are negotiated between buildings, facilities and promoters. However, the terms of those agreements might vary. She did think it is becoming more standard in the industry to have these types of co-promotional agreements.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 12-137 and that the 2012 financial results be presented to the City Council Finance Committee after the event to evaluate if this type of structure is a viable partnership model for future Moog Fest events, and that the U.S. Cellular Center be listed as an event partner in all promotional material and advertising for the event. This motion was seconded by Councilman Davis.

In response to Councilman Davis, Mr. Benson said it is agreeable with them to list the U.S. Cellular Center as an event partner in all promotional materials and advertising for the event.

Councilman Davis noted that this is certainly an exception for Council regarding sharing all their revenue streams.

Councilman Hunt asked for a friendly amendment for AC Entertainment to disclose their financials from 2010 and 2011, as well as transparency going forward.

Councilman Smith and Councilman Davis accepted Councilman Hunt's friendly amendment.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

The amended motion made by Councilman Smith and seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 436**

**D. RESOLUTION APPOINTING ALTERNATE MEMBERS TO THE BOARD OF ADJUSTMENT**

Councilman Smith, member of the Boards & Commissions Committee, said that this is the consideration of appointing two alternate members to the Board of Adjustment.

There currently exists two alternate seats, left vacant by Mr. James Sheeler, term to expire January 21, 2015; and Mr. Douglas Hattaway, term to expire January 21, 2014.

The following individuals have applied for the vacancies: Dimi Kulakov, Daniel Summerlin, Robert M. Swicegood and Derek Weekley.

On May 22, 2012, City Council instructed the City Clerk to arrange interviews for all the candidates. Mr. Kulakov withdrew his application and Mr. Summerlin was unable for the interview.

After Council spoke highly of the candidates, Daniel Summerlin received 5 votes; Robert M. Swicegood received 4 votes; and Derek Weekley received 5 votes. **NOTE:** Because the City Clerk noted an error in the voting after the meeting, (all three candidates received 4 votes), the matter will be postponed until June 26, 2012, meeting.

**E. RESOLUTION NO. 12-138 - RESOLUTION APPOINTING A MEMBER TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT**

Councilman Smith, member on the Boards & Commissions Committee, said that Isaac Savage, representing the seat for "expertise in the field of energy management" has resigned, thus leaving an unexpired term until December 31, 2013, on the Sustainable Advisory Committee on Energy & the Environment (SACEE).

The following individuals have applied for the vacancy: William Hutchings, Timothy Ballard, Charles Rosenblum, Stuart Smith, Peter Brezny, Marcus Renner, Lawrence Pittman, Alan Watts, Brandee Boggs and Melita Kyriakou.

Councilman Smith said that SACEE recommended Timothy Ballard or Brandee Boggs.

On May 22, 2012, City Council instructed the City Clerk to arrange interviews for Lawrence Pittman, Timothy Ballard and Brandee Boggs.

After Council spoke highly of the candidates, Timothy Ballard received 4 votes; Lawrence Pittman received 2 votes; and Brandee Boggs received no votes. Therefore, Timothy Ballard was appointed to the seat for expertise in the field of energy management to serve the unexpired term of Mr. Savage, term to expire December 31, 2013, or until his successor has been appointed

Councilman Smith noted that SACEE will be looking to expand their membership from 9 to 11 members and to alter some of the requirements for their seats.

**RESOLUTION BOOK NO. 34 – PAGE 437**

**F. BOARDS & COMMISSIONS**

Regarding the Airport Authority, the term of Vice-Mayor Manheimer expires on June 30, 2012. The following individuals have applied for the vacancy: Michael L. Hudkins, Albert Anderson, Tilt Thompkins, Bradley J. Cain, Julian D. Jones and Aixa Wilson. It was the consensus of the Boards & Commissions Committee, and of City Council, to allow Vice-Mayor Manheimer to remain on the Authority pending Airport legislation.

Regarding the Neighborhood Advisory Committee, the following individuals have applied for vacancies: Peggy Dutton, Alan Escovitz, Tikkun Gottschalk, Kathy Link, Grant Millin, Saul Chase, Teddy Jordan, Steven Stewart Cobb, Robert Roepnack, Steven Rasmussen, James A. Bond, Barber Melton, Carolyn Worthington, Elaine Poovey, DeWayne Barton, Mary Jean Burgin, Dwight Butner, Carmen Ramos-Kennedy, Aixa Wilson, Trina M. Mullen, Matt Pickett and Jean W. Boyd. After Council spoke highly of all the candidates, Council members first voted for one individual from each zip code, and then voted for 4 at-large members. In summary, it was the consensus of Council to appoint Carmen Ramos-Kennedy (at-large), Robert Roepnack (28804), Barber Melton (28805), Elaine Poovey (at large) and DeWayne Barton (28806). It was also the

consensus to interview Alan Escovitz, Saul Chase, Jean W. Boyd, Peggy Dutton, Teddy Jordan and Aixa Wilson.

**RESOLUTION NO. 12-139 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ELECTRICAL EXAMINERS**

Councilman Smith, member of the Boards & Commissions Committee, said that terms of Tommy Wilson, Phil Wilson, Fred Pratt, Gus Sims and Harold Garland, as members on the Board of Electrical Examiners, will expire on July 1, 2012.

The following individual applied for a vacancy: David Martin.

It was the consensus of the Boards & Commissions Committee to (1) reappoint Tommy Wilson (electrical contractor), Phil Wilson (journeyman electrician), Gus Sims (licensed engineer), and Harold Garland (layman); and (2) appoint David Martin (utility representative).

Councilman Bothwell moved to(1) reappoint Tommy Wilson (electrical contractor), Phil Wilson (journeyman electrician), Gus Sims (licensed engineer), and Harold Garland (layman); and (2) appoint David Martin (utility representative). All terms to expire July 1, 2015, or until their successors have been appointed. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 438**

**RESOLUTION NO. 12-140 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION**

Councilman Smith, member of the Boards & Commissions Committee, said that the terms of Joel Storrow, George Kelley and J. Michael Burke expire on June 30, 2012.

The following individuals applied for a vacancy: Deanna Reeder, Saul Chase, Grant Millin, Beau Dean, Angela Rutledge and William Foley.

It was the consensus of the Boards & Commission Committee to (1) reappoint Mr. Storrow and Mr. Burke to each serve a three year term respectively, terms to expire June 30, 2015; and (2) re-advertise.

Councilman Pelly moved to (1) reappoint Mr. Storrow and Mr. Burke to each serve a three year term respectively, terms to expire June 30, 2015; and (2) re-advertise. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 439**

**RESOLUTION NO. 12-141 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION**

Councilman Smith, member of the Boards & Commissions Committee, said that the term of Brian Cook will expire on July 1, 2012.

The following individuals applied for a vacancy: Deanna Reeder, Buck Bragg, Ronald Burgin and Aixa Wilson.

It was the consensus of the Boards & Commissions Committee to reappoint Mr. Cook.

Councilman Davis moved to reappoint Brian Cook as a member to the Asheville-Buncombe Historic Resources Commission to serve a three-year term, term to expire July 1,

2015, or until his successor has been appointed. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 440**

**RESOLUTION NO. 12-142 – RESOLUTION APPOINTING MEMBERS TO THE HOMELESS INITIATIVE ADVISORY COMMITTEE**

Councilman Smith, member of the Boards & Commissions Committee, said that the term of Wanda Lanier expired on November 1, 2011, and there currently exists a vacancy left by the passing of Gerald Hixson until November 1, 2013.

The following individuals have applied for a vacancy: Debbie Metcalf, Timothy Sadler, Charles Rosenblum, John Spears, Charles Barber, Jay Lively and Hilliard Carlisle.

It was the consensus of the Boards & Commissions Committee to appoint Mr. Jay Lively to serve a three-year term, term to expire November 1, 2014 and to appoint Mr. Hilliard Carlisle to serve the unexpired term of Mr. Hixson, term to expire November 1, 2013.

Councilman Davis moved to (1) appoint Mr. Jay Lively to serve a three-year term, term to expire November 1, 2014; and (2) appoint Mr. Hilliard Carlisle to serve the unexpired term of Mr. Hixson, term to expire November 1, 2013. Both appointments will be until their successors have been appointed. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 441**

**RESOLUTION NO. 12-143 – RESOLUTION APPOINTING MEMBERS TO THE NOISE ORDINANCE APPEALS BOARD**

Councilman Smith, member of the Boards & Commissions Committee, said that the terms of Jim Fink (Regular member), Barbara Hodgson (Regular member) and John Hayes (Alternate member) expire on July 1, 2012.

The following individual has applied for a vacancy: Beau Dean.

It was the consensus of the Boards & Commissions Committee to appoint John Hayes and Beau Dean as Regular members and re-advertise for the Alternate seat.

Councilman Bothwell moved to (1) appoint Mr. John Hayes as a Regular member to serve a three-year term, term to expire July 1, 2015; and (2) appoint Mr. Beau Dean as a Regular member to serve a three-year term, term to expire July 1, 2015. Both appointments will be until their successors have been appointed. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 442**

**RESOLUTION NO. 12-144 - RESOLUTION APPOINTING MEMBERS TO THE PUBLIC ART AND CULTURAL COMMISSION**

Councilman Smith, member of the Boards & Commissions Committee, said that the terms of Sharon Trammel, Robert Todd and Honor Moor expire on June 30, 2012. In addition, there currently exists a vacancy until June 30, 2014.

The following individuals applied for a vacancy: Ami Worthen, Jessica McCuan, Leslie Klingner, Davyne Dial, John Spears, Grant Millin, Itiyopia Ewart, Laura Corte, Andrew Monte, Angela Rutledge, Bruce L. Waller Jr., Bryan Andrews and Melinda Tennison.

It was the consensus of the Boards & Commissions Committee to (1) reappoint Ms. Trammel, Mr. Todd and Ms. Moor to each serve an additional three-year term respectively; and (2) appoint Leslie Klingner to serve a three-year term.

Councilman Hunt moved to (1) reappoint Ms. Trammel, Mr. Todd and Ms. Moor to each serve an additional three-year term respectively, terms to expire June 30, 2015; and (2) appoint Leslie Klingner to serve a three-year term, term to expire June 30, 2015. All terms are until their successors have been appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 443**

**RESOLUTION NO. 12-145 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD**

Councilman Smith, member of the Boards & Commissions Committee, said that the terms of Wanda Hawthorne, Wayne Wheeler, John Parrish, Hutch Kerns and Mary Ann West expire on June 30, 2012.

The following individuals applied for a vacancy: Barry Mundt, Richard D. Warren, John A. Broadbooks, Beau Dean, Robert Pierce, Robert Roepnack, Mike Lovoy and Ashley Arrington.

It was the consensus of the Boards & Commissions Committee to (1) reappoint Mr. Wheeler, Mr. Parrish and Mr. Kerns to each serve an additional three-year term respectively; and (2) appoint Barry Mundt and Ashley Arrington to each serve a three-year term.

Councilman Pelly moved to 1) reappoint Mr. Wheeler, Mr. Parrish and Mr. Kerns to each serve an additional three-year term respectively, terms to expire June 30, 2015; and (2) appoint Barry Mundt and Ashley Arrington to each serve a three-year term, terms to expire June 30, 2015. All terms are until their successors have been appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 444**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Ms. Judy Strong commented on several budget line items, including asking middle and low income people to pay for employee pay raises, suggestion to decrease employee health benefits, and find other sources for the golf course and McCormick Field.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 10:56 p.m.

Magdalen Pouncey
CITY CLERK

MAYOR

Tuesday – June 26, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Marc W. Hunt

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Pelly gave the invocation.

**I. PROCLAMATIONS:**

**A. BICYCLE FRIENDLY COMMUNITY AWARD**

Mr. Mike Nix, member of the League of America Bicyclists Board of Directors and Chairman of the National Bicycle Dealers Association, was pleased to present the Bicycle Friendly Community Award to the City of Asheville. He explained that the award is presented only to communities with remarkable commitments to bicycling.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 12, 2012**

**B. RESOLUTION NO. 12-146 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A RENEWAL OF THE ADOPT-A-PARK AGREEMENT WITH JUST FOLKS**

Summary: The consideration of a resolution authorizing the City Manager to sign a renewal of the Adopt-a-Park Agreement with Just Folks including a waiver for park use fees for Triangle Park for FY 2012-2013.

Just Folks is a local non-profit organization whose primary purpose is to support community-building activities in the Eagle/Market Street area. The members of the Board of Directors are all residents who grew up in the area and are actively engaged in efforts to improve the environment in Triangle Park by providing more positive uses of the park. Their focus on Triangle Park began eight (8) years ago when they were encouraged to produce cultural events in the park by a past City of Asheville Cultural Arts Superintendent. Last year City Council authorized the City Manager to sign an amended Adopt-a-Park agreement with Just Folks that included a waiver of park use fees and permit waivers for up to $2,500 for FY 2011-2012 to allow them to hold events in the park including music festivals, community cookouts and other community-building events in the park May to December on Saturdays and Sundays.

During FY 2011-2012, Just Folks has fulfilled the terms of the amended Adopt-a-Park agreement through activities that included:

- Conducting regular clean-ups

- Weeding and maintaining the planted beds
- Mulching paths and planting beds
- Providing volunteers to participate in these and other projects
- Providing the tools and materials to carry out regular maintenance and special approved projects
- Participating in the development of a mural project for the walls of the park assisted by thee Asheville Design Center and city staff and scheduled to be implemented in the fall of 2012.
- Holding a minimum of two (2) events each weekend during the course of the year, including music events and community cookouts that were free and open to everyone in the community.

The presence of Just Folks members and their programming in the park have continued to contributed to the reduction of nuisance behaviors in and around the park and improved appearance of the park, which has made the park more attractive to downtown visitors and community members and meeting specific City Council goals for economic and community development

Just Folks is requesting that their Adopt-a-Park agreement with the city be renewed for FY 2012-2013 and include waivers for park usage and event permitting fees at the same level of $2,500 approved for FY 2011-2012.

This action addresses City Council Strategic Goal for Asheville to be one of the safest and most secure communities compared to similar cities. The events held by Just Folks in Triangle Park proactively promote positive community interactions in the area and have significantly improved public safety in "The Block". Strategic partnerships allow the city to leverage programming and events to reach a wider and more diverse audience.

Pros:

- Provides additional quality cultural programming and diversity in a park that is generally not used for this type of event.
- Reduces staff time in processing fee wavier requests related to this group's events.
- This action is consistent with other partnerships the City has entered into for park programming in key community development areas.

Con:

- The reduction in permit fees result in lost revenue for the city; however, the city has not budgeted for this revenue in FY 2012-2013.

The estimated value of the waived park usage fees is $2,500; however, this revenue has not been included in the FY 2012-2013 budget.

Staff recommends that City Council authorize the City Manager to sign an Adopt-a-Park Agreement with Just Folks including a fee waiver for park usage fees associated with programming in Triangle Park.

**RESOLUTION BOOK NO. 34 – PAGE 445**

**C. RESOLUTION NO. 12-147 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2012 INGLES 4TH OF JULY CELEBRATION**

**RESOLUTION NO. 12-148 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2012 BELE CHERE FESTIVAL**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2012 Ingles 4th of July Celebration and the 2012 Bele Chere Festival.

- The Benevolent Patriotic Order of the Does has requested that City Council permit them to serve beer at the 2012 Ingles 4th of July Celebration and allow for consumption at this event.

  The 2012 Ingles 4th of July Celebration will be held at Pack Square Park on Wednesday, July 4, 2012, from 4:00 PM – 10:00 PM. The festival area will be open on Wednesday, July 4 from 4:00 PM – 10:00 PM.

  The sale of malt beverages will end at 9:30 PM. However, the possession of open containers of malt beverages or consumption of malt beverages would be allowed during the festival hours of 4:00 PM – 10:00 PM.

- The following organizations: Wild South, Asheville Ski Club, Asheville Area Paralegals, BPO Does, The Mediation Center, Cataloochee Ski Patrol, PBL –AB Tech, St Johns Episcopal Church, Green Opportunities, Asheville Breakfast Rotary Club, and Engineers without Boarders have requested that City Council permit them to serve beer and/or unfortified wine at the 2012 Bele Chere Festival and allow for consumption at this event.

  The 2012 Bele Chere Festival's Festival Area will be open on Friday, July 27, 2012, from 12:00 PM – 10:00 PM, Saturday, July 28, 2012 from 10:00 AM – 10:00 PM and Sunday, July 29, 2012 from 12:00 PM – 6:00 PM.

  The sale of malt beverages and/or unfortified wine will end at 9:45 PM in all instances; however, the possession of open containers of malt beverages and/or unfortified wine or consumption of malt beverages and/or unfortified wine would only be allowed during the periods as follows:

  Friday, July 27, 2012, from 12:00 Noon to 10 PM
  Saturday, July 28, 2012, from 10:00 AM to 10 PM

  There will be no sales and/or consumption of malt beverages and/or unfortified wine permitted on Sunday, July 29, 2012.

These actions have no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities

Con:

- Potential for public safety issues

The potential for public safety issues requires additional police presence and more overtime pay for Ashville Police Department officers. This expense is built into the FY 2012-13 Police Department operating budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2012 Ingles 4th of July Celebration and the 2012 Bele Chere Festival.

Councilman Davis thanked Ingles for providing fireworks at their 2012 4th of July celebration.

**RESOLUTION NO. 12-147 - RESOLUTION BOOK NO. 34 – PAGE 446**
**RESOLUTION NO. 12-148 - RESOLUTION BOOK NO. 34 – PAGE 448**

**D. RESOLUTION NO. 12-149 - RESOLUTION AUTHORIZING THE CITY MANAGER TO RENEW AN AGREEMENT WITH BUNCOMBE COUNTY TO OVERSEE THE ADMINISTRATIVE COORDINATION OF THE COLLABORATIVE COMMUNITIY CRIME PREVENTION PROJECT, CHANGING TOGETHER**

Summary: The consideration of a resolution authorizing the City Manager to execute on behalf of the City of Asheville an agreement with Buncombe County in which the City will act, for a second year, as the coordinating agency for the Changing Together community project aimed at reducing violence through strategic prevention, intervention and suppression

Changing Together is a comprehensive and collaborative community project with participation from law enforcement, the District Attorney's Office and numerous non-profit and social service agencies throughout Asheville and Buncombe County. It was formed to address the issue of violence and chosen by the Governor's Crime Commission (GCC) as a Tier 1 site for implementation of the Focused Deterrence Model (High Point Model) in fiscal year 2009.

On September 13, 2011, Council adopted a resolution authorizing the City Manager to enter into an agreement with Buncombe County to have the City oversee the administrative coordination of Changing Together. Since that time, the initiative has more clearly defined its goal of addressing violent crime through the focused deterrence model.

A call-in was held March 22, 2012 in which 13 of 19 offenders heard the message that their violent actions will no longer be tolerated and that law enforcement agencies are coordinating through an information-sharing network to ensure that call-in participants that continue to commit violent acts receive the most sever sentencing under the law. They also were made aware that if they reached out to initiative staff, Changing Together was committed to assisting in providing access to a variety of resources. After the call-in, 6 individuals spoke with staff and 4 of the 6 are receiving assistance and support from Changing Together staff, community members and service providers.

Currently, the County receives grant funding from the Governor's Crime Commission to coordinate direct services for call-in participants age 16 and older. Funding pays for the coordination of Changing Together, which includes a salary for the program director, project assistant and one resource counselor. For fiscal year 2012-13, the grant is $79,955.

The County is requesting the City continue responsibility for administrative coordination of Changing Together. One factor prompting the request is that the Governor's Crime Commission emphasized a preference for the coordination to be located in a municipality because of the stability it provides due to organizational capacity and infrastructure. The Buncombe County District Attorney's Office and the Buncombe County Sheriff's Office continue to be supportive of this restructuring of program coordination responsibilities.

If the agreement is approved, the program director and project assistant positions will again be overseen by the community relations division of the city manager's office with associated funding from the County in an amount not to exceed $79,060. The remainder of the grant will fund formal and informal service support systems. These components will be managed by Buncombe County Human Services. As part of the grant match, Buncombe County will also pay $20,400 for a Resource Counselor and $7200 for an outreach partner.

This action complies with City Council's Strategic Operating Plan in the Core Focus Area – Safety. This partnership will continue to assist the Asheville Police Department in its work to successfully work with youths at risk of gang exposure and as a strategy to improve safety in neighborhoods with high crime.

Pros:

- Through initiatives such as West Riverside Operation Weed and Seed, the City of Asheville has impactful experience administering federal and state grants focused on community-based crime prevention.
- Changing Together has a regional focus area which provides a natural evolution for the site-specific Weed and Seed program. Community members involved with Weed & Seed will be able to share their experiences with other neighborhoods and communities experiencing crime.
- Administrative coordination by the City creates an opportunity for seamless crime prevention coordination with the community and greater flexibility in adapting the Focused Deterrence function of Changing Together to meet future crime trends.

Con:

- Public perception of program effectiveness may by associated with only the City when it is actually a collaboration between the community, City of Asheville, Buncombe County and other state and federal agencies.
- Additional administrative resources related to contract management and accounts payable will be required.

Buncombe County has agreed to provide the required grant match of $26,665 for fiscal year 2012-13. With revenue in the amount of $79,060 received from the County, the City will manage funds budgeted for the program director and project assistant positions. These funds have been included as part of the FY 2012-13 budget. All positions will be contract employees in order to re-evaluate available state funding at the conclusion of the current fiscal year. Other than the time commitment related to administrative oversight, there is no hard cost impact on the current year budget.

Staff recommends City Council adopt the resolution authorizing the City Manager to execute, on behalf of the City of Asheville, the agreement with Buncombe County to continue administrative coordination of Changing Together

**RESOLUTION BOOK NO. 34 – PAGE 453**

**E. RESOLUTION NO. 12-150 - RESOLUTION AUTHORIZING THE CITY MANAGER ENTER INTO A CONTRACT WITH RIVERTOP CONTRACTING INC. FOR GROUND MAINTENANCE AT VARIOUS PARKS AND GREENWAYS**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Rivertop Contracting, Inc. to provide grounds maintenance services at various parks and greenways.

The City issued an Advertisement for Bids for grounds maintenance for parks and greenways on December 22, 2012. Rivertop Contracting, Inc., was lowest responsive and responsible bidder for a total of $125,600.

The grounds maintenance contract will extend from July 1, 2012 to June 30, 2013 with the option for two (2), twelve (12) month extensions based on contractor performance.

This action complies with the City Council Strategic Operating Plan in that it supports operation of the Park Maintenance operations to the highest levels of fiscal responsibility as well

as enhances a basic city service. It also complies with the Parks, Recreation and Cultural Arts Master Plan in that it provides ongoing maintenance and care for the City's park system.

Pro:
- Supports the efficient delivery of core park maintenance services.

Con:
- None

The $125,600 to support the grounds maintenance contract is budgeted in the FY 2012-2013 Parks, Recreation & Cultural Arts Department operating budget as part of the Park Maintenance budget.

City staff recommends City Council to adopt a resolution authorizing the City Manager to enter into a contract with Rivertop Contracting, Inc. to provide grounds maintenance services at various parks and greenways for a 12 month period with an option for 2, twelve month extensions based on contractor performance for a total of $126,500 beginning July 1, 2012.

**RESOLUTION BOOK NO. 34 – PAGE 454**

**F. RESOLUTION NO. 12-151 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MULTI-YEAR LEASE WITH THE MONTFORD PARK PLAYERS FOR CERTAIN PREMISES LOCATED AT 92 GAY STREET, KNOWN AS THE HAZEL ROBINSON AMPHITHEATRE**

Summary: The consideration of a resolution authorizing the Mayor to execute a multi-year lease with the Montford Park Players for certain premises located at 92 Gay Street, Asheville, NC, known as the Hazel Robinson Amphitheatre.

The Montford Park Players have been operating a theatre company at the Montford Community Center since 1973 with the mission to present the works of Shakespeare and other classical playwrights to the public free of charge. In 2012, the Montford Park Players were awarded funding from the Tourism Development Authority (TDA) for capital improvements to the Hazel Robinson Amphitheatre and as such, the Montford Park Players would like to enter into a formal lease agreement for the Amphitheatre and immediate vicinity.

The Hazel Robinson Amphitheatre is located to the rear of the Montford Center recreation complex and the proposed lease area measures approximately 1 acre. The original amphitheatre, constructed in 1983, is a one-story 1,800 square foot structure which combines all of the following: two-story stage house, scene shop, properties shop, costume shop, two dressing areas, electrical area for stage lighting control and a lounge area for actors waiting to go on stage. The hillside lawn facing the stage is terraced for audience seating. The proposed lease terms are as follows:

- Term: Initial ten years, with two renewal periods of five years each
- Tenant responsibilities: Installation of all improvements, per zoning standards.
- Rental: $1 per year
- All utilities to be paid by the tenant
- Maintenance: All maintenance to be performed by Tenant
- Standard provisions of all City leases (e.g. insurance, indemnity, etc.) will also apply

The proposed renovations to the Hazel Robinson Amphitheatre include (1) construction of a 400 square foot Guest Services Facility at the entrance to the Amphitheatre to house the concessions, patron restrooms and box office area, (2) improvements to the stage and lawn seating to bring the audience closer to the stage, (3) completion of the Stagehouse façade in the Elizabethan-Tudor style (4) construction of a two story 5,600 sq. ft. multi-use facility adjacent to

the existing building that will contain a rehearsal hall, backstage restrooms, dressing rooms, costume storage and actors lounge/ green room and (5) construction of a graded pathway for handicap accessibility to the Amphitheatre.

This action supports the City of Asheville Parks, Recreation, Cultural Arts & Greenways Master Plan by increasing the city's resources with alternative funding sources ensuring a high level of service in parks and facilities by addressing capital maintenance of existing parks and facilities to meet community standards. This action also complies with the City Council Strategic Operating Plan – Fiscal Responsibility by leveraging a community partnership to pursue capital improvements to an aging facility.

Pros:

- Community investment in a Parks facility at no cost to the City
- Supports the cultural arts and Asheville's performance arts community

Con:

- None

No expenses or in-kind services are required of the city for this lease. The city will receive no rental income from this lease.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute the lease agreement with the Montford Park Players on behalf of the City of Asheville.

Mayor Bellamy congratulated the Montford Park Players for a grant received from the Public Development Fund and looked forward to their performances at the Hazel Robinson Amphitheatre.

**RESOLUTION BOOK NO. 34 – PAGE 455**

**G. RESOLUTION NO. 12-152 - RESOLUTION AUTHORIZING THE MAYOR TO APPROVE A GRANT OFFER FROM THE FEDERAL AVIATION ADMINISTRATION FOR THE ASHEVILLE REGIONAL AIRPORT**

Summary: The consideration of a resolution authorizing the Mayor to approve a Grant Offer from the Federal Aviation Administration (FAA) in the amount of $1,558,054.

The FAA has offered a grant agreement to the Asheville Regional Airport. This grant, in the amount of $1,558,054, is for passenger boarding bridges (design, purchase, building modification).

Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 3-37-0005-041-2012. This authorization is contingent on the City's continued legal status as a sponsor of the Asheville Regional Airport, and recognition by the FAA, following the anticipated enactment of a law to establish the Asheville Regional Airport Authority, and transfer the operational responsibility for the Airport to that Authority.

City Attorney Oast noted that the resolution has been amended to reflect the authorization is contingent on the City's continued legal status as a sponsor of the Asheville Regional Airport.

**RESOLUTION BOOK NO. 34 – PAGE 456**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Smith moved for the adoption of the Consent Agenda, with the amendment to Resolution No. 12-152. This motion was seconded by Councilman Pelly and carried unanimously.

**III. PRESENTATIONS & REPORTS:**

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER ADOPTION OF AN ORDINANCE ORDERING THE DEMOLITION AND REMOVAL OF 44 LINDEN AVENUE**

**ORDINANCE NO. 4094 - ORDINANCE ORDERING THE DEMOLITION AND REMOVAL OF 44 LINDEN AVENUE**

Director of Building Safety Robert Griffin said that this is the consideration of an ordinance ordering the demolition and removal of the dwelling located at 44 Linden Avenue, Asheville, N.C. This public hearing was advertised on June 15, 2012.

This property first came to the attention of the Building Safety Department in the summer of 2009, having been the scene of a fire several years earlier. Numerous efforts were made to locate the whereabouts of the property owner to no avail. The owner was in default of a deed of trust and the lender had instituted foreclosure proceedings. Upon the lender's failure to follow through with the foreclosure sale, the City after giving notice, held an administrative hearing, ordering the demolition of the dwelling. The order of demolition was served upon the owner and the owner has voiced no opposition. The dwelling is in a severely dilapidated condition in that fire has substantially impacted the structural integrity of the foundation of the dwelling, no windows, gutters are missing, the eves are burned and failing with the interior of the dwelling severely smoke damaged throughout. In its current condition, the dwelling structure represents a public health and safety hazard.

This action supports the City's strategic goal of implementing strategies to significantly improve public safety in neighborhoods.

Pro:

- Eliminates a health and safety hazard and contributes to the City's tax value

Con:

- There is a $113,750 Deed of Trust along with a $21,340.00 line of credit against the property in favor of Bank of America. To protect the City's demolition lien, the City, maybe forced to litigate the superiority of its lien over Bank of America's liens.

City Council authorized the use of fund balance for demolitions on March 13, 2012. The demolition is expected to cost $8,750.

City staff recommends that City Council adopt the ordinance ordering the demolition of the dwelling located at 44 Linden Avenue.

Mayor Bellamy opened the public hearing at 5:12 p.m.

Mr. Jim Johnson, adjacent property owner, urged Council to support this demolition as they have been living next to this blight for five years.

Mayor Bellamy closed the public hearing at 5:12 p.m.

In response to Vice-Mayor Manheimer, Assistant City Attorney Martha McGlohon said that the City's lien will take priority over any deed of trust. The only item our lien will not take priority over is the ad valorem taxes.

In response to Councilman Smith, Ms. McGlohon said explained the process of getting a blighted structure removed and the timeframe, which could take anywhere from 3 months to one year, depending on if there are complications.

It was the consensus of Council to have information regarding the process of getting a blighted structure removed on the City's website.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Pelly moved for the adoption of Ordinance No. 4094. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 399**

**B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING FOR WHITE OAK GROVE APARTMENTS LOCATED AT 275 AND 281 HAZEL MILL ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY DENSITY DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF 92 APARTMENT UNITS HOUSED IN THREE BUILDINGS**

Mr. Bob Grasso, applicant, requested City Council to continue his public hearing until July 24, 2012, since a valid protest petition has been received requiring 6 out of 7 Council members to vote in favor of his application and Councilman Hunt is absent from this meeting. Therefore, Councilman Bothwell moved to continue this public hearing until July 24, 2012. This motion was seconded by Councilman Pelly and carried unanimously.

**C. PUBLIC HEARING TO CONSIDER A SIGNAGE PACKAGE FOR INGLES MARKETS INC. LOCATED AT 1115 AND 1141 TUNNEL ROAD**

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance approving a signage plan for Ingles Markets Inc. located at 1115 and 1141 Tunnel Road. This public hearing was advertised on June 15 and 22, 2012.

The proposed master signage plan is associated with a Level 1 expansion of the Oteen Ingles shopping center that proposes to add a new gas station (Ingles Gas Express) to the property. The main store is not being renovated at this time; however, the same signage that has been permitted for other Ingles Gas Express is desired for this new station. Additionally, staff and the applicant thought it prudent to also include consideration of new signage for the store if or when a renovation is considered. This additional signage would also match that permitted for the other stores and, if approved, would be valid for a period of five years. This signage would include the attached signage commonly used for the main store (including Starbucks), the gasoline sales/convenience store, and car wash facilities, along with a free-standing sign for both the gas express and the multi-tenant sign for Ingle's and other tenants.

The project site consists of two parcels totaling approximately 9.38 acres, zoned Highway Business (HB), and is considered to be a multi-tenant development. The Unified Development Ordinance (UDO) currently allows multi-tenant developments one free-standing development or joint identification sign (25' tall, 200 s.f.) and also attached signage for each individual business

within the development (one square foot per one linear foot of building frontage, not to exceed 200 s.f.). Additionally, tenants within a multi-tenant development are not permitted to have separate freestanding signs as is being proposed here.

The following table provides information on each of the signs that has historically been requested as part of the standard Ingle's signage plan as well as what is normally allowed and to what extent the request exceeds the normal standard. All of the following signs are included in this current request and are and consistent with those approved for 1865 Hendersonville Rd., 85 Tunnel Rd., and 153 Smokey Park Highway.

1115 & 1141 Tunnel Rd. (Oteen Ingles)

| INGLES MARKET EXHIBIT | PROPOSED | WHAT IS ALLOWED | AMOUNT EXCEEDED |
|---|---|---|---|
| Ingles (Store Sign) | 201.95 s.f. | 1 attached sign; not to exceed 200 s.f | 1.95 s.f. |
| American Owned | 36.0 s.f. | Not allowed | # of signs and s.f. has been exceeded |
| Fresh Foods | 29.46 s.f. | Not allowed | " |
| Starbuck's | 16.0 s.f. | Not allowed | " |
| Cafe | 8.48 s.f. | Not allowed unless not visible from the R.O.W. | " |
| Pharmacy | 13.13 s.f. | Wayfinding/directional | allowed |
| Vineyard (replaces "Video") | 16.09 s.f. | Not allowed | " |
| Free-standing Pylon | 180.26 s.f. | 1 sign @ 200 s.f | Permitted and Complies |

| GAS CENTER EXHIBIT | PROPOSED | WHAT IS ALLOWED | AMOUNT EXCEEDED |
|---|---|---|---|
| Gas Express, canopy | 36.6 s.f. | Not allowed; not a separate tenant | # of signs and s.f has been exceeded |
| Ingles, canopy | 24.0 s.f. | Not allowed; not a separate tenant | " |
| The i Market | 16.37 s.f. | Minimum of 25 s.f. or 1:1 ratio | Permitted and Complies |
| Wash Express and Laser Wash | 33.86 s.f.<br>4.32 s.f | Minimum of 25 s.f. or 1:1 ratio | Permitted and Complies |
| Free-standing Pylon | 121.84 s.f. | (1) Joint identification sign per development. | Number of free-standing signs have been exceeded. |

The stated purpose of allowing the consideration of a separate signage plan is as follows:

*The purpose behind this section is to permit creativity in sign design and placement to address site issues and constraints associated with topography, pedestrian-orientation, way-finding and other conditions unique to the subject development.*

Based on the nature of the activities occurring on the property, the surrounding site context on the commercial corridor, and other non-technical considerations, staff feels that the request is supportable. Staff also feels that a precedent for Ingles has been set through the approval of three other sign packages that were substantially similar to the package included in this report.

Pros:
- Provides clear and recognizable signage to a large grocery retailer.
- Maintains consistency with signage for other stores.

Cons:
- Exceeds existing standards without creatively addressing pedestrian-orientation or way-finding.
- Establishes a possible precedent or expectation that large box retailers are entitled to greater sign allowances.

Staff recommends that the signage plan for the Ingles development located at 1115 and 1141 Tunnel Rd. be approved as submitted with the following conditions: (1) All signs shall meet the HB zoning district setbacks, the site distance triangle requirements and all applicable building code requirements; (2) Window films shall be limited to image displays only; films that incorporate any form of commercial advertisement or trademark must be counted towards the development's signage requirements which are not included in this application; (3) Any changes to the signage included in this plan may require a new review by City Council; and (4) All signs shall comply with the proposed standards and no exceptions or variances are permitted.

Mayor Bellamy opened the public hearing at 5:22 p.m. and when no one spoke, she closed the public hearing.

At Councilman Pelly's request, Ms. Tuch elaborated on the con that it would exceed existing standards without creatively addressing pedestrian-orientation or way-finding.

Councilman Smith felt we have a separate standard for Ingles than we do for anyone else. He was concerned about having one entity consistently violate the sign ordinance because there are many people who struggle to stay within the sign ordinance. He did acknowledge what a wonderful partner Ingles is in so many ways in this community, but as far as maintaining a level of consistency and fairness, as far as the sign ordinance, he could not support a motion to approve the signage plan.

Councilman Davis said that the Ingles stores are a lot bigger today than what they were when the sign ordinance was adopted. He recalled discussion in the past to perhaps amend our ordinance or consider a sign package that is consistent with their stores, especially if they have more locations.

Ms. Tuch responded to Councilman Davis noting that after Ingles first application they consulted with the City Attorney's Office about whether or not there was a method available to us for a blanket approval for all their stores and avoid having to go through the public hearing process. However, the way the application is designed and the way it is written in the ordinance, it is per site. That was not an option available. To amend the Code would require direction from City Council.

Councilman Bothwell said that he would vote against this, as he has done in the past for other Ingles sign packages that are inconsistency with our sign ordinance. He felt this is excessive advertising and runs exactly against the reason we have the sign ordinance. Although Ingles is often a good community partner, in his opinion if they wanted to be a better community partner they should comply with the same rules that everyone else complies with.

Councilman Davis noted that Ingles is not unique as Council has amended sign packages for Mission Hospitals, Biltmore Park, etc.

At Councilman Davis' request, it was the consensus of Council to have staff review the sign ordinance to accommodate the changing nature of large grocery retailers. Councilman

Smith was amenable but expressed concern over the trend for larger or more signage and would prefer consideration for other more creative options.

Councilman Davis found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4095, to approve a signage plan for Ingles Markets Inc. located at 1115 and 1141 Tunnel Road, subject to the following conditions: (1) All signs shall meet the HB zoning district setbacks, the site distance triangle requirements and all applicable building code requirements; (2) Window films shall be limited to image displays only; films that incorporate any form of commercial advertisement or trademark must be counted towards the development's signage requirements which are not included in this application; (3) Any changes to the signage included in this plan may require a new review by City Council; and (4) All signs shall comply with the proposed standards and no exceptions or variances are permitted. This motion was seconded by Vice-Mayor Manheimer and failed on a 3-3 vote, with Mayor Bellamy, Vice-Mayor Manheimer and Councilman Davis voting "yes" and Councilman Bothwell, Councilman Pelly and Councilman Smith voting "no."

Mayor Bellamy was pleased that Asheville has two women leading the effort to plan our great City – Director of Planning & Development Judy Daniel and Assistant Planning & Development Director Shannon Tuch. She thanked Ms. Tuch for her leadership. She was also pleased about the award for Lexington Avenue as being named as one of the great main streets in the United States.

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 12-153 - RESOLUTION TO DESIGNATE ASHEVILLE THE INAUGURAL BEE CITY, USA**

Ms. Phyllis Stiles, Chair of the Bee City USA Steering Committee, explained why we need a Bee City USA program; Ms. Janet Peterson, Past President of the Buncombe County Chapter of the N.C. State Beekeeping Association, explained why Asheville should be the inaugural Bee City USA (sustainability; the Buncombe County Chapter is the nation's largest Bee Club; green; and Asheville is home for the Center of Honey Bee research); and Mr. Carl Chesick, Executive Director for Center for Honey Bee Research, explained the standards the City would be agreeing to if designated Bee City USA.

Both Asheville's SACEE Committee and Tree Commission have endorsed the principles of Bee City, USA, and many of Asheville's design standards, specifications, and developmental requirements contain many elements of Bee City, USA, and are readily adaptable to adoption of revisions to support Bee City, USA.

Pros:

- The plan continues Council's goals of improving the environment.
- Expanded pollination can improve food growth, production and quality.
- Identifying additional goals clarifies the mission of sound environmental stewardship of Asheville's resources.
- Aligns with other Asheville initiatives, such as Tree City, USA.
- Serving as the inaugural Bee City, USA advances Asheville's stake as a leader in conscientious environmental policies.
- Many of Asheville's existing standards and specifications already meet Bee City, USA guidelines.

Cons:

- Misunderstood perceptions of bees, particularly their role in a municipal environment, can be seen as a negative.
- Some slight revisions to standards and/or specifications may have to occur.
- Individual plans lose broader impact and collaboration.

This action meets Council's goal on several fronts: It supports and furthers sound environmental policies. It offers additional local opportunities to assist in green initiatives. It helps Asheville maintain its goal as a leader in the field.

Habitat budget can be incorporated into existing budgets and efforts in several departments, and standard and specification revisions can be incorporated into routine updates; therefore, no additional financial impact.

Staff recommends that Asheville City Council adopt a resolution designating Asheville as the inaugural Bee City, USA.

Councilman Smith recognized that the pollinators are a vital fundamental piece of having healthy food systems and it is his hope that as we move forward in an effort to create a food security plan, that the pollinators have a home within that as well.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 12-153. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 457**

**B. RESOLUTION NO. 12-154 - RESOLUTION ADOPTING A COMPLETE STREETS POLICY**

Director of Transportation Ken Putnam said that this is the consideration of a Complete Streets Policy.

In response to City Council's current strategic operating plan under the multi-modal transportation focus area (objective # 6); staff convened a multi-disciplinary working group to draft a complete streets policy for the City. The proposed policy is based on best practices identified by the National Center for Complete Streets and it meets the center's criteria for a comprehensive complete streets policy. Complete Streets policies have been adopted by the N.C. Dept. of Transportation (NCDOT), the City of Charlotte, and the Town of Chapel Hill. This policy will apply to new and existing city streets. It is complemented by the NCDOT's recently adopted complete streets policy and implementation guidelines.

Adopting the policy is only the first step. Implementation guidance will need to be developed so that the policy would have a lasting effect. The first steps include reviewing the Unified Development Ordinance and the City's engineering standards and specifications and modifying them as necessary, most likely during regular reviews of the documents rather than as a stand alone review. Staff might also seek adoption of guidelines similar to the recently published NCDOT complete streets guidelines if staff determines they are necessary.

The Complete Streets Policy is not a traffic calming technique. Complete Streets is the ability for us to look at the street and figure out a way to make it work for all modes of transportation. Traffic calming either diverts traffic away from a street or it slows traffic down.

The Complete Streets Policy may make use of some of the tools that traffic calming has, but that is not the purpose.

This action complies with the current City Council Strategic Operating Plan in the multi-modal transportation focus area by satisfying objective # 6 which states "City Council adoption of a complete streets policy".

This item was reviewed by the Planning and Economic Development Committee on April 17, 2012, and they recommended that it move forward to full City Council. It has also been presented to and endorsed by the Asheville Transit Commission, Greenway Commission, and the Asheville Bicycle and Pedestrian Task Force.

Pros:

- Meets objective # 6 under the multi-modal transportation focus area of the current Strategic Operating Plan.
- Formalizes a balanced approach to meeting the transportation needs for all modes of transportation.
- Provides a formal policy framework to coordinating transportation infrastructure maintenance and improvement projects.
- Supports existing best management practices for complete streets elements.
- Recognizes the need for pedestrians to be able to travel along a corridor as well the need to be able to cross a corridor.
- Includes maintenance activities; for example, resurfacing as well as new construction activities.

Cons:

- Could limit the ability to spread infrastructure improvements throughout the City in a given year.
- Could delay independent projects in order to make comprehensive improvements to a street or corridor.
- Could increase the complexity of transportation infrastructure maintenance project planning, design, and construction.
- Could increase the timeframe for project planning and design in order to consider all appropriate elements.

The subject policy will clarify the direction in which the City has been moving with its development regulations, engineering standards, and plans, including already adopted downtown, transit, bicycle and pedestrian plans. The subject action has no fiscal impact but there could be an unknown (at this time) fiscal impact during the implementation process.

City staff recommends that City Council adopt the complete streets policy as submitted.

Councilman Smith was excited about this as we have made a commitment to a multi-modal future in the City and it has so many benefits to our community.

Councilman Davis said that the French Broad River Metropolitan Planning Organization is advocating complete street policies in other communities and felt it was Asheville's role to be a leader and move forward with this Policy.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Manheimer moved for the adoption of Resolution No. 12-154. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 460**

**C. MOTION AUTHORIZING CITY STAFF TO PREPARE AND RELEASE A REQUEST FOR QUALIFICATIONS FOR A COMPREHENSIVE TRAFFIC ENGINEERING ANALYSIS ALONG THE CHARLOTTE STREET CORRIDOR**

Director of Transportation Ken Putnam said that the purpose of this update is to seek approval to prepare and release a request for qualifications (RFQ) for a comprehensive traffic engineering analysis along the Charlotte Street Corridor which is defined as that section of street from the I-240 westbound on/off ramps to Edwin Place. The subject corridor has a total length of about 0.50 mile.

The planning process began in 1996 when City Council directed the Planning Department to develop a small area plan for the subject corridor. Background information including historical development and existing conditions was collected and an Advisory Committee was established. The Advisory Committee designed a planning process that included community workshops/meetings and an intensive two-day design charrette. The results of the charrette were intended to be used as a foundation from which to develop the plan, rather than as a final product. One of the recommendations from the charrette process was to **explore** the possibility of creating a redesigned right-of-way along Charlotte Street between Chestnut Street and Edwin Place that would include two through movement traffic lanes and a center left-turn lane.

A statement included on page 3 of the document entitled "Asheville City Plan 2010 Charlotte Street Corridor Plan" indicates that a traffic corridor analysis prepared by the City's Engineering Department during August 1997 concluded that a three-lane section would reduce the overall level of service to "F", which is not good. Unfortunately, staff has been unable to locate that specific analysis and therefore cannot verify the results.

Following the charrette process, additional meetings were held, recommendations were eliminated and added, the draft plan was prepared and shared with the Advisory Committee and the community through an informal public meeting, and then it was presented to the Planning and Zoning Commission and the City Council for review and adoption. City Council adopted the plan on January 12, 1999 (Resolution # 99-11). The intention of the plan, as adopted, was to serve as a guide for future development and improvements along Charlotte Street. In addition, the Charlotte Street Transition Overlay Zoning District was approved by City Council on April 25, 2000 (Ordinance # 2690).

During 2001, a study known as the "Charlotte Street Transportation Enhancement Study" was undertaken by Kubilins Transportation Group, Inc. The overall goal of the study was to develop a **conceptual** design that would provide interim and long range enhancements to the Charlotte Street corridor through a balance of traffic analysis, responsive design, land use compatibility and substantive public involvement. As a part of the study process, the project team exhaustively researched known and available data and concluded that there were discrepancies between the traffic volumes listed in the 2010 Charlotte Street Small Area Plan and those collected by the North Carolina Department of Transportation. Therefore, additional traffic counts were collected during March 2001 and these counts served as the "base" for the current study. Using the updated traffic counts, a traffic analysis revealed that reducing the roadway to include two through traffic lanes and a center left-turn lane produced similar modeling results as existing conditions (four lanes without left-turn lanes).

The Charlotte Street Transportation Enhancement Study, which was completed during January 2002, concluded that dissention remained clear amongst the various interest groups on

the topic of transforming the corridor from an automobile dominated environment to a corridor where mobility options are balanced for all modes of transportation. One of the recommendations of the study was that a **comprehensive** study of traffic operations be conducted to model all affected intersections and to provide critical information regarding roadway geometry and signal timing and phasing.

During late 2009 and early 2010, City staff began meeting with concerned citizens who were interested in having the City take a more active approach to making Charlotte Street safer and more accessible to pedestrians. From the very beginning, staff encouraged the citizens to reach out to the area business owners and other community members in exploring possible changes to the corridor that would enhance the pedestrian experience (Although unsuccessful, City staff applied for a planning grant during the early part of 2009 as a part of a pilot program for creating walkable communities sponsored by the Federal Highway Administration).

The citizens formed a committee which is known as the "Charlotte Streetscape Committee" and they spent a lot of time during the past two years meeting with residents and business owners. They also circulated a survey and made a presentation to City Council on August 30, 2011. Their presentation to City Council emphasized their goal of identifying the least expensive and most effective way to enhance pedestrian safety and walkability along Charlotte Street that would not adversely impact the needs of the business owners. Overall, the results of the survey are consistent with public comments and suggestions received during the previous study periods. Many drivers use the street as a "cut-through" street to access other parts of the city and many pedestrians do not believe it is safe or comfortable to walk along the existing sidewalks.

A public meeting was held on February 6, 2012 at the Jewish Community Center with an estimated attendance of about 200 persons including four City Council members. The purpose of the meeting was informational **only**. No decisions were made before the meeting, during the meeting, or after the meeting. The format of the meeting provided ample time for questions and opportunities for public comment under the direction of an independent facilitator. City staff stressed the importance of receiving public comment at the meeting by oral communication and/or written communication. In addition, a public comment period was extended through February 17, 2012. Regarding the **possibility** of changing the existing four-lane section along Charlotte Street to a three-lane section, citizens were passionate on both sides of the issue (similar reactions have been documented in the previous studies). Some business owners located in the immediate study area are very concerned about potential loss of business as a result of any changes to Charlotte Street. Although there was not "clear cut", overwhelming consensus regarding 3 lanes versus 4 lanes, there seemed to be consensus on the following items:

- On-street parking along Charlotte Street is not needed.
- Improvements to the existing sidewalks are needed.
- Do **not** change Charlotte Street to 3 lanes on a trial basis.
- The section of Charlotte Street between I-240 and Chestnut Street should be separated from the section of Charlotte Street between Chestnut Street and Edwin Place.
- Overhead utilities should be placed underground.

City staff has worked very hard during the past two years to provide guidance and information to our citizens regarding the process of implementing various approved plans that exist. We have strived to remain neutral throughout this time period and now we need direction before moving forward. Possible next action steps include the following items:

- Prepare a request for qualifications (RFQ) to perform a comprehensive traffic engineering analysis that would model all of the affected intersections and would provide critical information regarding roadway geometry and signal timing and phasing (Estimated cost = $50,000 +/-).

- Prepare a request for qualifications (RFQ) to perform a comprehensive study to determine how to make pedestrian improvements without changing the existing Charlotte Street footprint (Estimated cost = $50,000 +/-).
- Do nothing (Existing conditions remain in place and no further action by staff).

The subject memorandum was presented to the PED Committee on March 20, 2012 and after due consideration, a recommendation was made for staff to submit and present the memorandum to City Council with the action step of authorizing staff to proceed with option 1, the comprehensive traffic engineering analysis.

The fiscal impact of Option 1 is estimated to be about $50,000 and the recommended source of funds is the Traffic Safety Projects Fund using the current available balance and part of the new allocation for FY 2012-13. In North Carolina, contracts for professional engineering services must be based on qualifications rather than low bid.

The scope of work for the comprehensive traffic engineering analysis would include the following tasks at a minimum:

- Reviewing previously collected traffic count data and collecting current traffic count data (2012).
- Establishing benchmarks (including levels of service, delay, and queue lengths) that all data would be compared to.
- Performing traffic engineering analyses for existing conditions (four lanes) and potential new conditions (three lanes) for the morning, mid-day, and afternoon peak hours during a typical weekday (Tuesday, Wednesday, or Thursday) using nationally recognized capacity software.
- Preparing a computer model that would clearly demonstrate the results under every scenario.
- Attending and speaking at any needed public meetings.
- Addressing concerns from citizens that have been submitted to staff.
- Discussing the pros and cons of moving forward with three lanes on a trial basis and determining the benchmarks for its success or failure.

It should be stressed that by moving forward with the comprehensive traffic engineering analysis, a decision has **not** already been made that Charlotte Street will be converted to three lanes. The analysis could conclude that Charlotte Street remain as a four-lane cross-section.

Based on the information in the subject memorandum, staff recommends moving forward with the comprehensive traffic engineering analysis in FY 2012-13 which begins on July 1, 2012.

The following individuals spoke in support of moving forward with a comprehensive traffic engineering analysis for several reasons, some being, but are not limited to: since there are a lot opinions, the study will look at a variety of options for the street, not just the 3-lane option; in 1994 there was interest in making Charlotte Street more walkable, neighborhood and pedestrian friendly commercial district; 38 businesses on Charlotte Street would like to see some improvement; and the study relates to the City's commitment to foster ways to promote multi-modal transportation:

Ms. Grace Curry, member of the Charlotte Street Streetscape Committee and north Asheville resident
Ms. Claudia Nix
Ms. Gwen Wisler, resident on Charlotte Street
Mr. Robin Wood
Owner of Charlotte Street Animal Hospital

The following individuals spoke in opposition of the City spending approximately $50,000 on a study to possibly reduce the lanes on Charlotte Street from 4 to 3, basically due to the already congested 4 lanes and the potential for additional response times by emergency vehicles:

Mr. Tom English, north Asheville resident
Representative of the Buncombe County Emergency Services
Mr. Chris Peterson, resident off Charlotte Street
Mr. R. L. Bailey, resident on Charlotte Street
Rev. Christopher Chiaronmonte
Mr. Jerry Sternberg, resident on Charlotte Street
Mr. Martin, employee of Fuddruckers Restaurant on Charlotte Street

In response to Councilman Pelly, Mr. Putnam said that he has not been made aware of any additional emergency response time needed after the change on College Street and felt sure that if the Fire Department was having any problems, they would have already been in contact with the Transportation Department.

When Councilman Pelly asked about previous studies, Mr. Putnam said that the other studies done were more conceptual and the last study done determined that before we move forward that a comprehensive study should be performed.

Councilman Smith said that the purpose of the study is to balance our roadways so different people can use them. We need to provide options for citizens and looked forward to seeing the results of the study.

In response to Councilman Davis, Mr. Putnam said that the comprehensive study would show us clearly, through a computer model, what is going on out on the street today. Hopefully they will be able to model that to exactly what people are experiencing. That would be the base from which we work from. At the same time, he wants the study to take the same existing data and assume that it will be a 3-lane section and then re-model it to see if it will improve or make things worse. He didn't want the study to give a definitive answer either way but only to give us enough information for staff, and involving the public, can be comfortable with the outcome. The study is only a tool to give Council the information for the ultimate decision.

When Councilman Davis asked if the study could be done in-house, Mr. Putnam said he and his staff do not have the amount of time necessary to devote to the study. They will, however, be involved with it.

In response to Councilman Davis, Mr. Putnam said that they did apply for a grant; however, they were not chosen to receive it.

Councilman Bothwell said that the study seems excessive, but felt it's the best way to move forward.

Vice-Mayor Manheimer reassured the public that the intention of Council is not to make anything worse or create problems for the businesses on Charlotte Street. The intention of Council is to make something better for all parties involved. She was interested in seeing what the study will produce.

Councilman Smith moved to direct staff to move forward with the comprehensive traffic engineering analysis in Fiscal Year 2012-13 for the Charlotte Street Corridor. This motion was seconded by Councilman Bothwell and carried unanimously.

**D. RESOLUTION NO. 12-158 - RESOLUTION PROHIBITING TOBACCO COMPANY SPONSORSHIP OF CITY OF ASHEVILLE EVENTS, INCLUDING, BUT NOT LIMITED TO BELE CHERE, EFFECTIVE JULY 30, 2012**

Councilman Bothwell said that Project ASSIST submitted a request to the City of Asheville in January 2012 via the Recreation Advisory Board to eliminate tobacco advertisement at Bele Chere. Project ASSIST is a service of Buncombe County Health Department to improve the health of county residents by promoting tobacco-free lifestyles, smoke-free places, and policies that support these efforts. The Tobacco Prevention and Control Program is managed through the Project ASSIST Tobacco Prevention Coalition, a local partnership of community members and agencies.

Because the ultimate decision regarding this policy change would be City Council, he felt it would be appropriate to bring it directly to Council and by-pass any other advisory boards. He said that there was one tobacco sponsorship last year that donated approximately $15,000 to the Bele Chere Festival. It it's the policy of Council not to permit smoking in City buildings and City parks, he felt it was reasonable to prohibit tobacco sponsorship at our City events. Although he has not seen anything in writing, he has heard that Mission Hospitals is willing to make up those sponsorship dollars.

He then read the following resolution: "Whereas, tobacco smoke has been conclusively linked to cancer, cardio-vascular disease and emphysema; and Whereas, tobacco-related disease affects public-health costs in our community, state and nation; and Whereas, 20 percent of our youth continue to take up a habit that will shorten their lives and the lives of those near to them; and Whereas, the City of Asheville prohibits smoking in public buildings and city parks; NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: Tobacco company sponsorship of City of Asheville events, including but not limited to Bele Chere, is prohibited, effective July 30, 2012."

Because the Bele Chere Festival contract for July 27-29, 2012, have already been let, he is asking for the effective date of July 30, 2012.

Rev. Christopher Chiaronmonte urged Council not to support the resolution.

Vice-Mayor Manheimer clarified that we are banning tobacco sponsorships only and that all regular ordinances still apply to Bele Chere.

In response to Councilman Bothwell, City Attorney Oast said that streets don't lose their character as streets just because they are barricaded – they are just banned from vehicular traffic.

Councilman Bothwell moved to adopt Resolution No. 12-158. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 467**

**E. BOARDS & COMMISSIONS**

**RESOLUTION NO. 12-155 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that her term on the Airport Authority expires on June 30, 2012. City Attorney Oast said that the legislation that is pending would prohibit elected officials from serving on the Airport Authority has

passed on the second or third reading today in the Senate and it has to go back to the House for concurrence. The legislature has predicted an adjournment date of July 2, 2012.

Vice-Mayor Manheimer said that basically the bill says that if you are serving in a term when the bill passes, you would finish that term.

There was a brief discussion on when the term would begin – either immediately or on July 1, 2012.

The following individuals have applied for the vacancy: Michael L. Hudkins, Albert Anderson, Tilt Thompkins, Bradley J. Cain, Julian D. Jones and Aixa Wilson.

Because Mayor Bellamy was interested in serving on the Airport Authority, Vice-Mayor Manheimer moved to appoint Mayor Bellamy to serve a four-year term, term to begin immediately and expire on June 30, 2016, or until her successor has been appointed. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 464**

**RESOLUTION NO. 12-156 - RESOLUTION APPOINTING ALTERNATE MEMBERS TO THE BOARD OF ADJUSTMENT**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing two alternate members to the Board of Adjustment.

There currently exists two alternate seats, left vacant by Mr. James Sheeler, term to expire January 21, 2015; and Mr. Douglas Hattaway, term to expire January 21, 2014.

The following individuals have applied for the vacancies: Dimi Kulakov, Daniel Summerlin, Robert M. Swicegood and Derek Weekley.

On May 22, 2012, City Council instructed the City Clerk to arrange interviews for all the candidates. Mr. Kulakov withdrew his application.

Because there was an error in the voting at the June 12 meeting, this matter is being brought back before Council.

After Council spoke highly of the candidates, Daniel Summerlin received 6 votes; Robert M. Swicegood received 5 votes; and Derek Weekley received 1 vote. Therefore, Mr. Summerlin was appointed as an alternate member to the Board of Adjustment to serve the unexpired term of Mr. Sheeler, term to expire January 21, 2015, or until his successor has been appointed; and Mr. Swicegood was appointed as an alternate member to the Board of Adjustment to serve the unexpired term of Mr. Hattaway, term to expire January 21, 2014, or until his successor has been appointed

**RESOLUTION BOOK NO. 34 – PAGE 465**

**RESOLUTION NO. 12-157 – RESOLUTION APPOINTING MEMBERS TO THE NEIGHBORHOOD ADVISORY COMMITTEE**

Vice-Mayor Manheimer said that on June 12, 2012, it was the consensus of City Council to appoint Robert Roepnack, Barber Melton, Elaine Poovey, DeWayne Barton and Carmen Ramos-Kennedy to the Neighborhood Advisory Committee.

Also on June 12, City Council, it was the consensus to interview Alan Escovitz, Saul Chase, Jean W. Boyd, Peggy Dutton, Teddy Jordan and Aixa Wilson. Mr. Wilson was unable to attend the interview.

After Council voted highly of the candidates, in summary after votes were counted, Alan Escovitz, Saul Chase, Jean W. Boyd and Peggy Dutton were appointed as members of the Neighborhood Advisory Committee to serve until their successors have been appointed. City Clerk Burleson would stagger the terms.

**RESOLUTION BOOK NO. 34 – PAGE 466**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Ms. Patricia Dockery asked for Council to adopt a temporary noise ordinance designating night hours from 11:00 p.m. until 7:00 a.m. until the Public Safety Committee concludes their outreach. Councilman Bothwell, Chair of the Public Safety Committee, explained that staff will bring back a report to the Committee in 60 days.

Rev. Christopher Chiaronmonte commented about Asheville losing its uniqueness.

Mr. Alan Ditmore spoke about sleeping in public is a right as a human need.

At Mayor Bellamy's suggestion, it was the consensus of Council to direct the City Manager to participate in the Bloomberg Philanthropies Mayors Challenge to come up with creative, local solutions to the problems affecting communities from coast to coast. The deadline is July 16.

Mayor Bellamy thanked all those City departments and other agencies that came to her and her family's assistance when a large tree fell on her home on July 21. She was proud to be Mayor of such a wonderful group of public servants.

**Closed Session**

At 7:17 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: The Institute for Southern Studies, Inc., d/b/a Carolina Public Press, Gannett Pacific Corporation, d/b/a Asheville Citizen-Times, Green Line Media, Inc., d/b/a Mountain Xpress, Western North Carolina Public Radio, Inc., d/b/a WCQS, and Sinclair Broadcast Group, Inc., d/b/a WLOS TV; City of Asheville; and Buncombe County District Attorney's Office. The statutory authorization is contained in G.S. 143-318.11(a)(3); (3) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 7:57 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:57 p.m.

Magdalen Bullerson
CITY CLERK

MAYOR

Tuesday – July 24, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Vice-Mayor Manheimer gave the invocation.

**I. PROCLAMATIONS:**

**A. ANNOUNCEMENT OF STRIVE NOT TO DRIVE WINNERS**

Mayor Bellamy recognized Mr. Keith Bamberger who explained the Strive Not To Drive Program. Mayor Bellamy then said that each year Strive Not To Drive recognizes individuals and organizations that help make getting places without driving alone in a car easier. The winners were nominated by their friends, peers, and admirers for their dedication to striving not to drive. The Golden Spoke Award goes to people who make commuting by bike a priority. The Golden Wheel Award goes to people who are multi-modal mixing walking, cycling, and riding the bus to get the places they need to go. We also give a Strive Not To Drive Leadership Award to people who lead by example and make it easier for others to Strive Not To Drive. This year Strive Not To Drive is recognizing two individuals with the Golden Spoke Award: Caroline Wiltz and Lynn Player; Golden Wheel Award: Morna Childers, West Asheville Library and Jim Grode; and Strive Not to Drive Leadership Award: Renee Owen. The Workplace Challenge winners are as follows: winner for business and organizations with fewer than 10 employees – The Western North Carolina Alliance; the winner for 11-30 employees – Equinox Environmental; the winner for 31-50 employees – REI; the winner for 51 to 250 employees – SMARTTRAC Technology; and the winner for business and organizations over 251 employees – Buncombe County.

**B. ENVIRONMENTAL EXCELLENCE AWARD FOR THE DR. WESLEY GRANT SR. SOUTHSIDE CENTER**

Ms. Susan Roderick, Executive Director of Asheville Greenworks, and Ms. Willie Mae Brown, presented City Council via Director of Parks, Recreation & Cultural Arts Roderick Simmons, with the Environmental Excellence Award for the construction of the Dr. Wesley Grant Sr. Southside Center. The Center construction included significant green building techniques to earn LEED certification, the first for new construction of a city-owned building.

On behalf of City Council, Mayor Bellamy thanked Ms. Roderick for the Award. She also thanked City staff, Jane Mathews, the Junior League, K. Ray Bailey and Virgil Smith for their hard work in helping Asheville achieve this award.

## II. CONSENT AGENDA:

At the request of City Manager Jackson, Consent Agenda Items "D 1 and 2" and Consent Agenda Item "L" were removed from the Consent Agenda and would be scheduled at a later date.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 26, 2012**

**B. RESOLUTION NO. 12-159 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXTEND THE GENERAL SERVICES CONTRACT WITH CAROLINA MANAGEMENT TEAM FOR THE WATER RESOURCES WATER STORAGE TANK AND PIPE COATING AND MAINTENANCE PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to extend the general services contract with Carolina Management Team (CMT) for the Water Resources Water Storage Tank and Pipe Coating and Maintenance Project for the 2012-13 fiscal year with an option to renew for an additional fiscal year.

On July 26, 2011, City Council awarded the general services contract to Carolina Management Team for the Water Storage Tank and Pipe Coating and Maintenance Project. The scope of the project is for the maintenance, rehabilitation, repair, and repainting of water storage tanks and pump station piping at various sites in the water distribution system. Project locations have included: West Asheville Candler Knob Tanks, Spivey Mountain Tank, South Buncombe Tank, Spivey Mountain Pump Station, Ridgeview Tank, Beaverdam Pump Station, Gaston Mountain Tank, Patton Mountain Pump Station, and Young's Cover Tank.

The Water Resources Department desires to extend CMT's contract for an additional fiscal year with an option to renew for an additional fiscal year, both at $150,000.00 each year, contingent upon funding. The extension of the contract with CMT with a one year option to renew benefits the City as follows: eliminates the time and expense associated with re-bidding; eliminates the logistics and operational requirements to mobilize another Contractor's workforce on site; continued work with a company who has a proven track record for excellent work and a known contract cost.

This project is part of City Council's strategic plan to maintain and improve city infrastructure and provide local companies with labor opportunities.

Pros:

- Approval of the project will allow Water Resources to complete necessary maintenance on various water storage tanks and pump station piping in need of rehabilitation and repair. The project will also make these sites more aesthetically pleasing.
- The project will provide a local company with work for at least the next year.
- The WRD will realize cost savings by not having to rebid the project.

Cons:

- If the project does not continue, the water storage tanks and pump station piping on the list to be rehabilitated and repaired will continue to degrade, which may eventually jeopardize the system's water quality.

No additional appropriations are necessary as funds are budgeted in the Water Resources Capital Improvement Projects Fund.

City staff recommends City Council adopt a resolution authorizing the City Manager to extend the general services contract with Carolina Management Team for the Water Resources Water Storage Tank and Pipe Coating and Maintenance Project for the fiscal year 2012-13 with

an option to renew for the 2013-14 fiscal year, at a cost of $150,000.00 per fiscal year contingent upon funding.

**RESOLUTION BOOK NO. 35 – PAGE 1**

**C. RESOLUTION NO. 12-160 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH PATTON CONSTRUCTION GROUP INC. FOR THE HAW CREEK AND RIDDLE ROAD WATERLINE REPLACEMENT**

**ORDINANCE NO. 4095 - BUDGET AMENDMENT FOR THE HAW CREEK AND RIDDLE ROAD WATERLINE REPLACEMENT**

Summary: The consideration of a resolution authorizing the City Manager to enter into a construction agreement with Patton Construction Group, Inc., for the bid amount of $914,790.00 plus a contingency amount of $91,479.00 for a total in the amount of $1,006,269.00 for the Haw Creek Area and Riddle Road Waterline Replacement; and a budget amendment in the amount of $369,169.00 from savings in other capital projects that were completed under budget.

This project consists of the construction and installation of approximately 3,200 linear feet (LF) of 8-inch ductile iron pipe and 6,130 LF of 6-inch ductile iron pipe with all associated valves, hydrants, and services to provide fire protection and domestic water service to the Haw Creek area and Riddle Road area. The Water Resources Department (WRD) issued an Advertisement For Bids for the construction project. In response to the Advertisement For Bids, the WRD received five (5) proposals.

Companies responding were:

1. Cana Construction – Waynesville, NC
2. Carolina Specialties Construction – Hendersonville, NC
3. Huntley Construction – Asheville, NC
4. Patton Construction Group, Inc. – Arden, NC
5. Steppe Construction, Inc. – Mill Spring, NC

The bids were reviewed by City Staff and McGill Associates Consulting Engineers, and Patton Construction Group, Inc., was selected as the lowest responsible bidder at a bid of $914,790.00. A contingency amount of $91,479.00 has been added for a total contract amount of $1,006,269.00.

This project is part of City Council's strategic plans to improve city infrastructure and provide local companies with labor opportunities.

Pros:

- This project will replace existing waterlines, which are undersized, constructed of asbestos cement pipe, and/or rupture often causing costly repairs for the City and Water Resources Department and frequent outages for the customers, with a durable, reliable, sustainable water system for the Haw Creek and Riddle Road areas.
- This project is aligned with the City and Water Resources Department goal of continued investment and improvement of the City's water system through Capital Improvement Projects, in order to provide safe and reliable service.
- Approval of the construction contract to the lowest responsible bidder will invest City funds in the local economy.

Con:

- Failure to award a construction contract would prevent the completion of this important waterline system improvement.

The Water Resources Department currently has $637,100.00 budgeted for this project. The remaining funds of $369,169.00 needed for the contract will be transferred from the General Projects capital project that accumulates remaining funds from all of Water Resources completed, inactive capital projects. In order to use the funds in General Projects, a budget amendment is necessary.

| | |
|---|---|
| Amount in Haw Creek / Riddle Road Project | $ 637,100.00 |
| Amount Needed for Construction Contract | $ 369,169.00 |
| Total Amount for Project | $1,006,269.00 |

The amount remaining in General Projects will be reallocated to other capital projects as the need arises. Staff will seek Council approval on any future reallocation of these funds.

City staff recommends City Council approval of the City Manager to enter into an agreement with Patton Construction Group, Inc., for the bid amount of $914,790.00 plus a contingency amount of $91,479.00 for a total contract amount of $1,006,269.00 for the Haw Creek Area and Riddle Road Waterline Replacement; and a budget amendment in the amount of $369,169.00 from savings in other capital projects that were completed under budget.

**RESOLUTION BOOK NO. 35 – PAGE 2**
**ORDINANCE BOOK NO. 27 – PAGE 401**

**D. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER WITH BROWN AND CALDWELL FOR THE MAIN WATER TRANSMISSION LINE EVALUATION PROJECT**

**BUDGET AMENDMENT FOR THE MAIN WATER TRANSMISSION LINE EVALUATION PROJECT**

These items were removed from the Consent Agenda in order to have staff prepare a presentation related to this topic.

**E. ORDINANCE NO. 4097 - ORDINANCE ENACTING A THROUGH TRUCK PROHIBITION ON RIVERVIEW DRIVE FROM AMBOY ROAD TO HAYWOOD ROAD**

Summary: The consideration of an ordinance to enact a through truck prohibition on Riverview Drive from SR 3556 (Amboy Road) to SR 3548 (Haywood Road).

The Traffic Engineering Division has conducted a traffic-engineering study along the subject road at the request of residents. This study, which included a truck traffic count, has determined that the subject street is not appropriate for through truck traffic.

City ordinances # 19-60 and 19-61 prohibit trucks from using residential and designated streets as listed in Appendix C of the Code of Ordinances. For purposes of these ordinances, a truck is defined as a vehicle that has any of the following characteristics; a gross vehicle weight rating of 10,000 pounds or more, a tandem or tri-axle, or a tractor or tandem vehicle when pulling semi-trailers or tandem semi-trailers. There are certain exceptions to the ordinances including points of destination on the specific street, authorized detour route, emergency vehicles, public utility vehicles, wreckers (when towing), and buses.

This action complies with the City Council Strategic Operating Plan in the Safety focus area by improving the "street experience" for all users including pedestrians, bicycles, and motorists in a primarily residential corridor.

The Public Safety Committee reviewed the subject action on June 25, 2012, and recommended that it move forward to City Council for consideration and approval.

Pros:

- City staff has been able to respond favorably to citizens requests.
- Consistent with streets of like character and design.
- Based on a traffic-engineering study.

Cons:

- Initial cost to install the appropriate truck prohibition signs is about $400.00.
- Typically, traffic control signs have a serviceable life of five to seven years.

The initial cost to install the appropriate truck prohibition signs is about $400.00 and is included in the current operating budget for the Transportation Department.

City staff recommends that City Council approve an ordinance to enact a through truck prohibition on Riverview Drive from SR 3556 (Amboy Road) to SR 3548 (Haywood Road).

**ORDINANCE BOOK NO. 27 – PAGE 405.**

**F. RESOLUTION NO. 12-162 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH T&K UTILITIES INC. FOR THE MCINTOSH ROAD WATER SYSTEM IMPROVEMENTS PROJECT**

**ORDINANCE NO. 4098 - BUDGET AMENDMENT FOR THE MCINTOSH ROAD WATER SYSTEM IMPROVEMENTS PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to enter into a construction agreement with T&K Utilities, Inc., for the bid amount of $635,860.00 plus a contingency amount of $64,140.00 for a total in the amount of $700,000.00 for the McIntosh Road Water System Improvements Project; and a budget amendment in the amount of $466,000.00 from savings in other capital projects that were completed under budget.

This project consists of the construction and installation of approximately 6,500 Linear Feet (LF) of new 8-inch Ductile Iron Pipe (DIP) and 1,000 LF of 6-inch DIP with all associated valves, hydrants, and services to provide fire protection and domestic water service to the McIntosh Road area. The Water Resources Department (WRD) issued an Advertisement For Bids for the construction project. In response to the Advertisement For Bids, the WRD received three (3) proposals.

Companies responding were:

6. Carolina Specialties Construction – Hendersonville, NC
7. T & K Utilities, Inc. – Asheville, NC
8. Patton Construction Group, Inc.– Arden, NC

The bids were reviewed by City Staff and T & K Utilities, Inc., was selected as the lowest responsible bidder at a bid of $635,860.00. A contingency amount of $64,140.00 has been added for a total contract amount of $700,000.00.

This project is part of City Council's strategic plans to improve city infrastructure and provide local companies with labor opportunities.

Pros:

- This project will complete an important link in the Water System between Brevard Rd and West Oakview Road and provide better domestic and fire service to the areas of McIntosh Rd, Pond Rd and Hazelnut Dr.
- The completion of this project will accomplish waterline relocation on Pond Rd that is necessary to allow NCDOT to complete a bridge replacement project on I-26 over Pond Rd.
- This project is aligned with the City and Water Resources Department goal of continued investment and improvement of the City's water system through Capital Improvement Projects, in order to provide safe and reliable service.
- Approval of the construction contract to the lowest responsible bidder will invest City funds in the local economy.

Con:

- Failure to award a construction contract would prevent the completion of this important waterline system improvement.

The Water Resources Department currently has $234,000.00 budgeted for this project. The remaining funds of $466,000.00 needed for the contract will be transferred from the General Projects capital project that accumulates remaining funds from all of Water Resources completed, inactive capital projects. In order to use the funds in General Projects, a budget amendment is necessary.

| | |
|---|---|
| Amount in McIntosh Road WL Project | $234,000.00 |
| Amount Needed for Construction Contract | $466,000.00 |
| Total Amount for McIntosh Road | $700,000.00 |

The amount remaining in General Projects will be reallocated to other capital projects as the need arises. Staff will seek Council approval on any future reallocation of these funds.

City staff recommends City Council approval of the City Manager to enter into an agreement with T & K Utilities, Inc, for the bid amount of $635,860 plus an additional contingency amount of $64,140.00 for a total in the amount of $700,000.00 for the McIntosh Road Water System Improvements Project; and a budget amendment in the amount of $466,000.00 from savings in other capital projects that were completed under budget.

**RESOLUTION BOOK NO. 35 – PAGE 5**
**ORDINANCE BOOK NO. 27 – PAGE406**

**G. RESOLUTION NO. 12-163 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE WITH DANNY'S DUMPSTER FOR THE PURPOSE OF OPERATING A COMPOST FACILITY ON CITY-OWNED PROPERTY AT 120 HARDESTY LANE**

Summary: The consideration of a resolution authorizing the City Manager to execute a Lease Agreement with Danny's Dumpster, Inc. for the purpose of installing and operating a Type III compost facility on a portion of city-owned real property at 80 Hardesty Lane, Asheville, NC.

Danny's Dumpster, Inc. is a small business located in Leicester, NC that serves as a commercial food waste hauling company for area establishments such as restaurants, universities, hospitals, etc. The food waste collected by Danny's Dumpster is used as a primary input in industrial composting operations. In addition to food waste hauling, Danny's Dumpster seeks to establish a compost processing facility to process food wastes and wood debris into the finished soil amendment known as compost. Compost processing facilities are regulated by the North Carolina Department of Environmental and Natural Resources, Solid Waste Division. Danny's Dumpster is in the process of applying for a Type III permit, which would enable Danny's Dumpster to process vegetable, grain, fruit, meat, and dairy food wastes.

The property at 80 Hardesty Lane is approximately 33 acres and is located at the back of the Recreation Park complex, between the Swannanoa River and the railroad. The current uses of this property are: (1) The City of Asheville Public Works Department operates a 5-acre beneficial fill site for waste concrete and other inert materials; (2) New Sprout Organic Farms leases 10 acres of land for certified organic fruit and vegetable production; (3) the Men's Garden Club of Asheville operates a small greenhouse on approx 0.37 acres. The proposed lease area for Danny's Dumpster is 5 acres +/-, directly adjacent to the beneficial fill site. This lease area will be minimally improved with three in-vessel composting containers, a food waste mixing container and covered storage areas for wood chip / debris and finished compost product. Danny's Dumpster will be required to access this site using the back entrance to Recreation Park off of U.S. 70 to avoid potential congestion with park users. No direct sales of compost will be permitted onsite.

The proposed lease terms are as follows:

- Initial term of two (2) years with the option to renew for two (2) additional two (2) year periods, subject to the mutual consent of the parties.
- Tenant responsibilities: Installation of all improvements, subject to zoning standards. Must maintain cleanliness of property, improvements, clearing of debris.
- All utilities to be paid by the tenant
- Maintenance: All maintenance to be performed by Tenant
- Mutual rights to terminate lease
- Rental: As consideration for the annual rental fees, Danny's Dumpster Inc. will accept all tree, limb and brush material generated by the Public Works Department of the City of Asheville free of charge. This in-kind arrangement equals an estimated $50,000 annual cost savings for the Public Works Department.
- Standard provisions of all City leases (e.g. insurance, indemnity, etc.) will also apply

The Notice of Intent to enter into a Lease Agreement with Danny's Dumpster, Inc. was published on July 13, 2012, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the Lease Agreement is being requested. In the notice, the property was referenced as 80 Hardesty Lane; should this resolution be approved, the address assigned to this portion of the property will be 120 Hardesty Lane.

This action complies with the City Council Strategic Operating Plan by addressing the following goals: (1) Job Growth and Community Development Goal by supporting diversified job growth and business development, (2) Green & Sustainable Goal by reducing city-wide solid waste and (3) Fiscal Responsibility by leveraging an external partnership to reduce City service costs.

Pros:

- Support the local green economy
- Contributes to solid waste reduction
- Cost savings in the form of in-kind service exchange
- All tree, limb and brush debris collected by the City of Asheville will be recycled into compost

Con:

- None

The lease agreement requires that Danny's Dumpster accept all tree, brush and limb debris generated by the Public Works Department free of charge. Given the existing disposal costs associated all tree, limb and brush material, the City estimates the value of this cost savings at $50,000 per year. The City will receive no rental income from this lease.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute the lease agreement with Danny's Dumpster, Inc. on behalf of the City of Asheville.

In response to Mayor Bellamy, Real Estate Manager Nikki Reed said we will be leasing this surplus land to an existing business. She said Danny's Dumpster is an existing hauling business that is looking to expand to actually process the commercial compost that he now picks up. This is a straight forward lease of surplus property.

**RESOLUTION BOOK NO. 35 – PAGE 7**

**H. RESOLUTION NO. 12-164 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT RIVERFEST 2012**

**RESOLUTION NO. 12-165 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT DOG DAY AFTERNOON**

**RESOLUTION NO. 12-166 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE GOOMBAY FESTIVAL**

**RESOLUTION NO. 12-167 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS & FUN FESTIVAL**

**RESOLUTION NO. 12-168 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE SYMPHONY IN THE PARK**

**RESOLUTION NO. 12-169 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CHAMBER AFTER HOURS**

**RESOLUTION NO. 12-170 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT ORGANICFEST**

**RESOLUTION NO. 12-171 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE CITIZEN-TIMES HALF MARATHON & 5K**

**RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE WEST ASHEVILLE SOAPBOX DERBY**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at RiverFest 2012 on August 11, 2012; Dog Day Afternoon on August 18, 2012; the Goombay Festival on August 24, 25 & 26, 2012; the Lexington Avenue Arts & Fun Festival on September 1 & 2, 2012; Symphony in the Park on September 3, 2012; Chamber After Hours on September 6, 2012; Organicfest on September 8, 2012; the Asheville Citizen-Times Half Marathon & 5K on September 15, 2012; and the West Asheville Soapbox Derby on September 29, 2012.

- Riverlink has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at RiverFest 2012 and allow for consumption at this event.

  RiverFest will be held on Saturday, August 11, 2012, from 1:00 p.m. – 7:00 p.m., within the boundaries of French Broad River Park, as per the event area limits referenced on the accompanying site map.

- Animal Compassion Network has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at Dog Day Afternoon and allow for consumption at this event.

  Dog Day Afternoon will be held on Saturday, August 18, 2012, from 10:30 a.m. – 4:00 p.m. within the boundaries of Carrier Park, as per the event area limits referenced on the accompanying site map.

- YMI Cultural Center has requested through the City of Asheville Development Services Center that City Council permit the sale of beer and/or unfortified wine at the Goombay Festival and allow for consumption at this event.

  The Goombay Festival will be held on Friday, August 24, 2012 from 6:00 p.m. to 9:00 p.m., Saturday, August 25, 2012 from 12:00 p.m. to 10:00 p.m. and Sunday, August 26, 2012 from 11:00 a.m. to 9:00 p.m. within the boundaries of Eagle Street between Biltmore Avenue & S. Spruce Street, South Market Street between S. Pack Square & Beaumont Street, and includes Triangle Park, Sycamore Street and Wilson Alley, as per the event area limits referenced on the accompanying site map.

- Arts2People has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Lexington Avenue Arts & Fun Festival and allow for consumption at this event.

  The Lexington Avenue Arts & Fun Festival will be held on Saturday, September 1, 2012 from 8:00 p.m. to Sunday, September 2, 2012 at 2:00 a.m. and again on Sunday September 2, 2011 from 11:00 a.m. to 9:00 p.m. within the boundaries of Lexington Avenue between the intersections of College Street and the I-240 overpass, Walnut Street between Broadway and Rankin Avenue, Rankin Avenue between Walnut Street and Hiawassee, Hiawassee between Rankin Avenue and Carolina Lane, Chicken Alley and Carolina Lane between Hiawassee and Walnut Street, the Rankin Avenue Monthly Parking Surface Lots on Rankin Avenue between Walnut and Hiawassee, and the metered parking lot at Lexington Avenue and the I-240 Underpass, as per the event area limits referenced on the accompanying site map.

- The Asheville Symphony Society in conjunction with Arts2People has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at Symphony in the Park and allow for consumption at this event.

  Symphony in the Park will be held on Monday, September 3, 2012 from 1:00 p.m. to 9:00 p.m. within the boundaries Pack Square Park's Roger McGuire Green, Reuter Terrace, City-County Parking Lot, and Spruce Street between College Street and Court Plaza as per the area limits referenced on the accompanying site map.

- The Asheville Buncombe Youth Soccer Association has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at Chamber After Hours and allow for consumption at this event.

Chamber After Hours will be held on Thursday, September 6, 2012 from 5:30 p.m. to 7:00 p.m. within the boundaries of Azalea Park as per the area limits referenced on the accompanying site map.

- Asheville Greenworks has requested through the City of Asheville Development Service Center that City Council permit them to serve beer and/or unfortified wine at OrganicFest and allow for consumption at this event.

  OrganicFest will be held on Saturday, September 8, 2012 from 10:00 a.m. to 6:00 p.m. with all beer and/or unfortified wine contained to a beverage tent located within Pack Square Park's Roger McGuire Green as per the area limits referenced on the accompanying site map.

- Lend-a-Hand Foundation has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the Asheville Citizen-Times Half Marathon & 5K and allow for consumption at this event.

  The Asheville Citizen-Times Half Marathon & 5K will be held on Saturday, September 15, 2012 from 5:30 a.m. to 12:00 p.m. along various streets with all beer and/or unfortified wine restricted to a portion of Otis Street, as per the event area limits referenced on the accompanying site map.

- Asheville Greenworks in conjunction with Run Amok Productions has requested through the City of Asheville Development Services Center that City Council permit the sale of beer and/or unfortified wine at the West Asheville Soapbox Derby and allow for consumption at this events.

  The West Asheville Soapbox Derby will be held on Saturday, September 29, 2012, from 12:00 p.m. – 5:00 p.m. on Seven Oaks Road between the intersections of Wilmington Street and Westwood Place, as per the event area limits referenced on the accompanying site map.

These actions have no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for Riverlink, Animal Compassion Network, YMI Cultural Center, Arts2People, Asheville Buncombe Youth Soccer Association, Asheville Greenworks, Lend-a-Hand Foundation, and Run Amok Productions.

Con:

- Potential for public safety issues

There is no direct fiscal impact related to the approval of this resolution.

City staff recommends City Council adopt the resolutions authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at RiverFest 2012, Dog Day Afternoon, the Goombay Festival, the Lexington Avenue Arts & Fun Festival, Symphony in the Park, Chamber After Hours, Organicfest, Asheville Citizen-Times Half Marathon & 5K, and the West Asheville Soapbox Derby.

Due to questions raised by Councilman Davis regarding the West Asheville Soapbox Derby event on September 29, it was the consensus of Council to remove consideration of that resolution at this meeting until further information regarding the event and location of the event can be obtained. It was also the consensus of Council, at the suggestion of Mayor Bellamy, to provide Council with a listing of how many events that have applied for the possession of alcohol at their events and if each of those events have a tie to Asheville.

**RESOLUTION NO. 12-164 - RESOLUTION BOOK NO. 35 – PAGE 8**
**RESOLUTION NO. 12-165 - RESOLUTION BOOK NO. 35 – PAGE 11**
**RESOLUTION NO. 12-166 - RESOLUTION BOOK NO. 35 – PAGE 14**
**RESOLUTION NO. 12-167 - RESOLUTION BOOK NO. 35 – PAGE 17**
**RESOLUTION NO. 12-168 - RESOLUTION BOOK NO. 35 – PAGE 20**
**RESOLUTION NO. 12-169 - RESOLUTION BOOK NO. 35 – PAGE 23**
**RESOLUTION NO. 12-170 - RESOLUTION BOOK NO. 35 – PAGE 26**
**RESOLUTION NO. 12-171 - RESOLUTION BOOK NO. 35 – PAGE 29**
**RESOLUTION NO. 12-172 - RESOLUTION BOOK NO. 35 – PAGE 32**

**I. RESOLUTION NO. 12-173 - RESOLUTION TO THE CHIEF OF POLICE AS THE ABC BOARD AUTHORIZED OFFICIAL TO MAKE RECOMMENDATIONS CONCERNING THE SUITABILITY OF PERSONS OR LOCATIONS FOR ABC PERMITS**

Summary: The consideration of a resolution to designate the Chief of Police as the authorized official to make recommendations concerning the suitability of persons or locations for ABC permits to the North Carolina Alcoholic Beverage Control Commission (Commission).

Pursuant to NCGS 18B-901, ABC permits are issued by the Commission. Before issuing a permit, the Commission shall be satisfied that the applicant is a suitable person to hold an ABC permit and that the location is a suitable place to hold the permit for which the applicant has applied. One of the factors that the Commission takes into consideration is the recommendation of the local governing body. Pursuant to NCGS 18B-904(f), the governing body may designate an authorized official, by name or by position, to make recommendations as to the suitability of a person or of a location for alcohol permits.

This item was reviewed by the Public Safety Committee and received unanimous approval.

This action aligns with the City Council's Strategic Operating Plan in the goal that Asheville will be one of the safest and most secure communities when compared to similar sized cities. By inspecting and regulating locations and persons for alcohol permits we enhance public safety.

Pros:

- Compliance with statutory regulations in permitting alcohol sales.
- Clearly designates the Chief of Police as the authorized official for the City of Asheville concerning ABC permits.

Con:

- None.

The Asheville Police Department recommends that City Council approve the resolution designating the Chief of Police as the Authorized Official for the City of Asheville to make recommendations as to the suitability of a person or of a location.

**RESOLUTION BOOK NO. 35 – PAGE 35**

## J. RESOLUTION NO. 12-174 - RESOLUTION AMENDING A HOUSING TRUST FUND LOAN TO MOUNTAIN HOUSING OPPORTUNITIES INC. FOR THE APARTMENTS AT THE GLEN ROCK HOTEL

Summary: The consideration of a resolution authorizing approval of an additional $167,000 in Housing Trust Fund financing to Mountain Housing Opportunities, Inc. (MHO) for the development of 22 one-bedroom apartments at the Glen Rock Hotel.

MHO has proposed a 22-unit multifamily rental development in the historic Glen Rock Hotel building on Depot Street. The site size is .66 acres and is currently zoned Urban Place with Conditional Use zoning. The total project development cost is $2,569,900. Through this project, 11 HOME units will be created, fulfilling the HOME unit commitment in the old East Riverside project. The amount of that grant ($235,000) is included in the project's sources of funds.

The Project was previously approved for funding in January 2012 as two separate loans, with more favorable terms being offered for the units rented below 60% AMI. The first loan in the amount of $165,500 was approved as a deferred interest-only loan at 2.00% interest with principal deferred for 20 years. This represented 75% of the total loan request at that time. Twelve (12) of the proposed units are proposed to be targeted to persons at or below 60% AMI. The second loan in the amount of $55,000 was approved as an amortized loan with monthly payments at 2.5% interest for 20 years. This represented 25% of the total loan request. Ten (10) of the proposed units will be targeted to persons at or below 80% AMI.

Staff has received a funding request from Mountain Housing Opportunities (MHO) for an additional $167,000 to complete the project financing. MHO has explored all available financing options and funding sources. In addition to City and County support, funding has been provided by Neighborworks America, the TD Bank Charitable Foundation, and Community Housing Capital. MHO will also provide a $125,000 developer loan and a $125,000 CDFI loan to the project. The additional funding requested by the developer will allow the project to begin construction. The terms requested are 2.50% interest-only with principal deferred for twenty (20) years. Approval of this request with special loan terms of interest-only financing requires an exception to our current policy. If approved at the requested amount, the new loan will bring the total HTF investment in the project to $387,000. The maximum aggregated loan amount under current guidelines for a project of this size is $200,000.

Staff analysis of the financial proforma suggests that that terms requested are necessary and reasonable due to the minimal cashflow that will be available for debt service after expenses. The Housing and Community Development Committee reviewed the request at their June 21st meeting and recommends approval at the requested terms based upon the financial need of the project.

The project proposal meets the funds' stated priorities in that 100% of the units will be one-bedroom floor plans. The first floor of the hotel (12,600 SF) will be developed commercially at a later time. MHO remains in negotiations with local grocers who may be interested in utilizing this space. The second and third floors (15,306 SF including common areas) will be adapted to residential use. The per-unit subsidy based upon the total aggregate loans of $387,000 is $17,590. The aggregate loan requests represent 15% of the total development costs. The total per-unit development cost is $116,814. The developer has provided a third party market analysis which reflects a capture rate of 4.5% for those persons seeking one-bedroom units. This would equate to a current market demand of 488 units, of which the project only needs to attract 22 tenants. Staff would note that units of this size (485-740 square feet) are relatively uncommon and comparable projects are not available by which to gauge the impact of the smaller floorplans on marketability.

The project is located in the East of the Riverway area, and is easily accessible to services, transit and employment. Two (2) of the units will be fully ADA accessible. The project

will be LEED certified. Success of previous mixed-use developments demonstrates sufficient developer capacity for this type of project.

The project directly supports the City's Strategic Operating Goals: (1) *Affordable*: The project proposal is supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville; and (2) *Sustainable*: The proposed project provides new housing units located near transit lines, higher urban development densities, and encourage higher standards of energy efficiency. The project also addresses the priorities of the Consolidated Strategic Housing & Community Development Plan by increasing the housing stock, providing affordable rental units, building high quality energy-efficient housing, and coordinating development with transportation and jobs.

Pros:

- Priority development area.
- Development team has been successful on similar projects.
- Financing commitments exceeding $1.5million have been received from non City-County sources.
- Urban location with easy access to employment, transit, and services.
- Energy efficiency with LEED certification
- Addresses the need for additional one-bedroom and efficiency units.
- Rehab and adaptive reuse of existing building.
- Catalyst for continued revitalization of a formerly distressed area.

Cons:

- Requested loan terms do not comply with current guidelines.
- Developer is relying heavily on City-County subsidy.
- There are no comparable projects by which to assess the impact of relatively small unit size on market demand.
- The City has a significant prior investment in the Glen Rock Apartments representing a substantial concentration of capital.

The current balance in the Housing Trust Fund is $470,848.07. No adverse fiscal impact is expected or anticipated. If approved, $303,848.07 will remain available to support other qualified projects.

The Housing and Community Development Committee recommends City Council approve a resolution amending the loan terms as previously authorized in Resolution No. 12 10 dated January 10, 2012, to Mountain Housing Opportunities, Inc.; and approving the following loans to Mountain Housing Opportunities, Inc at the terms stated: (1) $332,000 at 2.50% interest-only with principal deferred 20 years to Mountain Housing Opportunities, LLC for the development of Twelve (12) multifamily units at the Glen Rock Hotel on Depot Street; all funds to be made immediately available for disbursement following loan closing. These Twelve (12) units to be restricted to families earning 60% or less of the area median income; and (2) $55,000 amortized at 2.5% interest for 20 years to Mountain Housing Opportunities, LLC for the development of Ten (10) additional multifamily units at the Glen Rock Hotel on Depot Street; all funds to be made immediately available for disbursement following loan closing. These Ten (10) units to be restricted to families earning 80% or less of the area median income.

**RESOLUTION BOOK NO. 35 – PAGE 36**

## K. RESOLUTION NO. 12-175 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE ACT AS LEAD AGENCY AND FISCAL AGENT FOR THE 2011-12 EMERGENCY SOLUTIONS GRANT PROGRAM

Summary: The consideration of a resolution for the City to act as the lead agency and fiscal agent for the 2011 and 2012 Emergency Solutions Grant.

The HUD Emergency Shelter Grant program is undergoing extensive changes. In prior years, agencies providing homeless shelter, outreach and homelessness prevention services applied directly to HUD for funding, primarily for operational costs for their programs. In Buncombe County, the following agencies and programs were funded last year: ABCCM Day Shelter, ABCCM, Steadfast House, Helpmate, Homeward Bound, AHOPE, and Salvation Army.

As the (now renamed) Emergency Solutions Grant, the program emphasis is changing from emergency and transitional shelters to rapid rehousing activities. Funding for Asheville and Buncombe County programs will be routed through the State of North Carolina, as opposed to directly through HUD. Instead of individual agency application, the State will require that each Continuum of Care (the City is the lead agency for the Asheville Buncombe CoC) submit one application detailing the use of funds for the coming year. The application deadline is August 13.

A total of $164,444 will be available this year to Asheville and Buncombe County. A supplemental FY 2011 allocation of $37,794 must be used for rapid rehousing. The FY 2012 allocation of $126,646 is available for both traditional purposes (limited to existing grantees) and for rapid rehousing. Per federal regulations, no less than 40% of those funds must be used for rapid rehousing, and the State has set that as a minimum, encouraging CoC's to do more.

The proposed City of Asheville role moving forward is for the City, through the Community Development Division, be the lead agency for the ESG program, and be the Fiscal Agent for the program as well. As lead agency, we would facilitate the application process to the state for the FY 11 and the FY 12 ESG funds, including facilitating the local recommendations for agency funding. As fiscal agent we would, upon receipt of the award, administer the grant by entering into contracts with the funded agencies, processing their request for draw downs, ensuring program compliance, and report to the State. This is the same role we play with CDBG and HOME funds, although we report directly to HUD for those funds. Some funds (estimated between $7,000 and $10,000) will be made available to the City for grant administration.

The Homeless Initiative Advisory Committee, the joint City/County advisory committee established to coordinate the 10 Year Plan to End Homelessness, has created a subcommittee to assist with preparing a community-wide application in this important transition year. None of the subcommittee members represents an agency that receives ESG funds, or that would receive ESG funds.

For funding decisions, our proposed process is that the Homeless Initiative Advisory Committee would make a recommendation to the Housing and Community Development Committee regarding individual agency funding. The HCD Committee recommendation would serve as an authorization to submit the final application, with their recommendation going to Council at the earliest possible time for final ratification

The project directly supports the City's Strategic Operating Goal of *Affordable*: The project proposal is supportive of the City's goal for all citizens to have access to safe, sufficient and affordable housing, by supporting initiatives intended to address homelessness with an emphasis on Housing First.

Pros:

- ESG funding is a key funding resource for emergency shelter, and is now becoming an important resource for rapid rehousing of persons experiencing homelessness;
- By acting as lead agency and fiscal agent, the City can assist homeless services providers by ensuring a coordinated and consistent application;
- By acting as fiscal agent, the City can ensure timely payment of grant funds to participating agencies and ongoing compliance with applicable state and federal regulations;
- We anticipate that the applications for future funding from HUD and the State will require a lead agency and fiscal agent, and this program gives the City specific experience in working with the State.

Cons:

- The application deadline was announced last week. Although we have been preparing for this, the deadline is very tight nonetheless, and does not coordinate well with Council's meeting schedule. This is the reason for designating the HCD Committee be authorized to submit the final application.

Program funding is entirely from the US Department of Housing and Urban Development. Existing community development division staff will administer the program. No general funds are requested to support this program.

Staff recommends that Council approve the resolution authorizing the City of Asheville act as lead agency and fiscal agent for the FY 11 and FY 12 Emergency Solutions Grant, and authorizing the Housing and Community Development Committee to approve the submittal of the regional application, to be ratified by City Council at its earliest opportunity.

**RESOLUTION BOOK NO. 35 – PAGE 37**

**L. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE HOUSING AUTHORITY TO FUND AND CREATE A PUBLIC HOUSING POLICING UNIT**

This item was removed from the Consent Agenda until the terms of the agreement are finalized, the fiscal analysis and performance measures are determined, and a budget amendment is ready for Council consideration as a new business item.

**M. RESOLUTION NO. 12-176 - RESOLUTION SETTING A PUBLIC HEARING ON AUGUST 14, 2012, TO CONSIDER AN ECONOMIC DEVELOPMENT GRANT FOR LINAMAR CORPORATION**

Summary: The consideration of a resolution authorizing a public hearing to be held on August 14, 2012, to consider an economic development incentive grant for Linamar Corporation.

Linamar Corporation is a world-class designer and diversified manufacturer of precision metallic components and systems for the automotive industry, energy and mobile industrial markets. The company located a new manufacturing facility in the former Volvo facility in the City of Asheville in 2011. The company is planning a $75,000,000 expansion on its South Asheville campus and has requested consideration for a performance based incentive grant under the City of Asheville Economic Development policy. The City of Asheville is considering offering a performance-based grant totaling $1,000,000.

North Carolina state law requires a public hearing be held before an incentive grant can be officially awarded.

The economic development incentive grant for Linamar supports the City Council's Strategic Operating Plan as it addresses multiple focus areas. Under the Job Growth and

Community Development focus area, the project supports the Goal of creating more collaborative and effective working partnerships between the COA, the business community, and other key organizations to effectively manage the city's regulatory environment while accomplishing economic development goals by meeting the objective to support diversified job growth and small business development. It supports the goal of supporting a strong local economy by continuing to implement sustainable growth and development policies by promoting sustainable, high density infill development that makes efficient use of existing resources.

Pros:

- Performance driven grant that is distributed after job and investment is achieved;
- Supports job creation and capital investment in manufacturing in Asheville;
- Supports development of an identified economic cluster in the City; and,
- Supports regional and state cooperation in the project.

Cons:

- Grant is formulated based on use of 75% of value of property tax revenue for a 5 year period.

The project has an overall positive fiscal impact on tax revenues received by the city. Initially (during the grant period), the City will receive approximately 25% of the new incremental property tax revenues from the project. After 5 years, the City will henceforth receive 100% capture of new city property taxes.

City staff recommends Council approve a resolution authorizing a public hearing to be held on August 14, 2012, on an economic development incentive grant agreement to support the expansion of Linamar Corporation.

**RESOLUTION BOOK NO. 35 – PAGE 38**

**N. RESOLUTION NO. 12 -177 - RESOLUTION AWARDING THE PROJECT KNOWN AS WILD CHERRY ROAD BRIDGE CONSTRUCTION PROJECT TO SADDLEBROOK CONSTRUCTION INC. AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH SAME**

Summary: The consideration of a resolution authorizing the City Manager to execute a unit price contract (and all change orders in the amount up to a total contract amount of $580,000.00) with Saddlebrook Construction, Inc., in the amount of $463,711.44 for the project known as Wild Cherry Road Bridge Construction Project, Project # ENG-11-12-012.

In response to a Priority Maintenance Notification for Bridge Maintenance issued by the NCDOT Bridge Management Unit, a Request for Qualifications was advertised on October 28, 2011 by the City for a firm to analyze the status of the bridge and determine whether it was more prudent to rehabilitate or replace the bridge and to prepare a design of the selected course of action. The engineering firm of Mattern and Craig was selected for this undertaking. Their recommendation based on a Life Cycle Cost Analysis was to replace the bridge.

A formal request for bids for construction was issued on May 29, 2012; bids were received on June 14, 2012. There were a total of 2 bids received; not meeting the required minimum number of bids the project, per NCGS 143-132, was re-advertised on June 14, 2012. Bids were received again on June 22, 2012. Three bids were received with the lowest responsive bidder being Saddlebrook Construction, Inc., located in Pickens, S.C., with an amount of $463,711.44.

This will be a unit price contract and not a lump sum contract and is part of the City of Asheville's CIP program.

This action complies with the City Council Strategic Operating Plan of Fiscal Responsibility and Multimodal Transportation in that it will be providing infrastructure maintenance and increase the output of new sidewalks. This action will also address the Priority Maintenance Notification for Bridge Maintenance issued by the NCDOT Bridge Management Unit.

Pros:

- Updating a failing infrastructure item.
- Will be a step forward in meeting the City's Strategic Plan and CIP goals.
- Is listed as an identified need on the City of Asheville pedestrian plan.

Cons:

- Project management and contract administration will consume staff time and City funds.
- Temporary lane closures.
- The new construction will increase the maintenance load on the City.

The budget for this project was included in the approved FY 2011-12 Capital Improvement Program and is being financed with proceeds from the 2012 Limited Obligation Bond issuance. The $580,000 contract price is within the approved project budget.

Staff recommends City Council to authorize the City Manager to execute on behalf of the City of Asheville a contract with Saddlebrook Construction, Inc., in the amount of $463,711.44 for the project known as Wild Cherry Road Bridge Construction Project, and all change orders in the amount up to a total contract price of $580,000.00 to pay for unexpected items that might be uncovered.

**RESOLUTION BOOK NO. 35 – PAGE 39**

**O. RESOLUTION NO. 12-178 - RESOLUTION AUTHORIZING THE PURCHASE OF REAL PROPERTY ON CURVE STREET**

Summary: The consideration of a resolution to purchase real property on Curve Street for $1,000 that is bisected by Curve Street.

North Carolina General Statute sec. 160A-11 authorizes the City of Asheville to purchase real property. Parcel number 9648-68-5878 consists of .17 acres of property that is bisected by Curve Street, a City maintained street. Curve Street bisecting the property predates records detailing its creation, and the owner has approached the City wishing to sell the bisected property. Although the City has a statutory obligation and right to continue to maintain Curve Street without regard to the underlying property; obtaining the property will allow Public Works staff to clarify the Curve Street right-of-way for future maintenance clarity. City staff, including those from Legal and Economic Development, have researched the proposed purchase and found an equitable offer of $1,000 to which both sides are agreeable.

Pros:

- The purchase will clarify the status of Curve Street ownership for perpetuity.
- It will clear the books of an unused parcel of property.
- It is a mutually agreeable purchase.

Con:

- Uses operational funds to purchase property.

This action meets Council's goal on several fronts: It is a collaborative partnership to clarify a public good. A clarified street right-of-way will allow for future design potential should multi-modal transportation ever be an option for any future Curve Street redesign.

Other than the initial purchase of $1,000, there is no additional fiscal impact to the City of Asheville. The initial purchase will be absorbed in the Public Works budget.

Staff recommends that Asheville City Council adopt a resolution authorizing the purchase of parcel 9648-68-5878, consisting of .17 acres bisected by Curve Street.

**RESOLUTION BOOK NO. 35 – PAGE 40**

**P. RESOLUTION NO. 12-179 - RESOLUTION ACCEPTING SONNET LANE AS A CITY-MAINTAINED STREET**

Summary: The consideration of a resolution to accept Sonnet Lane as a city-maintained street.

Code of Ordinances sec. 7-15-1(f)(4)a requires that streets dedicated for public use be accepted by resolution of the City Council. The developer submitted a written request on May 7, 2012, asking the City to accept the subject street as a city-maintained street.

Sonnet Lane from Bassett Road to its dead-end is a developer-constructed street that has an average width of 20 feet with stand-up asphalt curb and 24-inch curb and gutter, a length of 0.18 mile, and a right-of-way width that varies from 25 to 32 feet.

Transportation Department staff and Public Works Department staff inspected the subject street and determined that it was constructed according to current standards as indicated in the City of Asheville's Standard Specifications and Details Manual.

Following City Council's approval of this resolution, the subject street will be added to the official Powell Bill List.

This action complies with the current City Council Strategic Operating Plan within the Sustainable Focus Area by accepting street infra-structure to help support the healthy growth of the City.

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help maintain the street.
- The street provides access and connectivity in a residential community.

Con:

- Powell Bill Funds will not cover 100% of the total cost to maintain the street.

There will be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the street.

Staff recommends that City Council accept Sonnet Lane as a city-maintained street.

**RESOLUTION BOOK NO. 35 – PAGE 41**

**Q. ORDINANCE NO. 4099 - BUDGET AMENDMENT TO PURCHASE TWO VEHICLES TO SUPPORT OPERATION OF THE TRANSIT SYSTEM**

Summary: The consideration of a budget amendment in the amount of $56,250, from federal grant funding and Transit Capital Reserves, to purchase two vehicles to support operation of the transit system.

Transit Operations staff has identified the need to replace two support vehicles used to perform supervisory activities. Currently there are four vehicles available to perform supervisory activities including transporting drivers on a daily basis. The vehicles recommended for replacement have achieved their useful life of five years and will be replaced by two new SUV type vehicles. The SUV type vehicles will be a valuable asset especially during periods of inclement weather.

The City was granted funding through the annual apportionment, Section 5307 of the Federal Transit Administration. The annual apportionment is regularly used for capital items as well as operating and American with Disabilities Act's related expenses. Staff has secured a total of $56,250 to complete the subject project including a local match of 20% ($11,250). The local match will come from Transit Capital Reserves.

The project should be accomplished within the next three months.

This action complies with the City Council 2012-13 Strategic Operating Plan within the green and sustainable focus area by taking the City of Asheville's sustainability to the next level.

Pros:

- Replaces aged vehicles for more efficient ones which should generate savings in fuel consumption and maintenance costs
- Federal Funds will provide 80% of the total project cost, which equates to $45,000.

Cons:

- The total cost of the project is $56,250.
- The City's share of the total cost of the project is $11,250.

The total cost of the project is $56,250 including a 20% local match equating to $11,250. The local match will come from Transit Capital Reserves. After this allocation, there will be approximately $46,000 remaining in the Transit Capital Reserves.

Staff recommends that City Council adopt a budget ordinance amendment in the amount of $56,250 from Federal Funds and Transit Capital Reserve Funds to purchase two support vehicles.

**ORDINANCE BOOK NO. 27 – PAGE 408**

**R. ORDINANCE NO. 4100 - BUDGET AMENDMENT TO INCREASE THE ORIGINAL BUDGET FOR THE PURCHASE OF AN AUTOMATED VEHICLE LOCATION SYSTEM FOR THE TRANSIT SYSTEM**

Summary: The consideration of a budget amendment, in the amount of $225,000, from state grant funds to increase the original budget for the purchase of an Automated Vehicle Location system for the transit system.

On February 28, 2012, staff requested permission to apply for a FY 2013 Urban Advanced Technology grant. The Urban Advanced Technology grant is a biannual opportunity offered by the North Carolina Department of Transportation designated exclusively to provide funding for technology projects that would enable transit systems to improve efficiency in their operations and at the same time enhance the riders experience using transit.

The City was awarded $405,000 to acquire an Automated Vehicle Location (AVL) system with focus in the Real Time Passenger Information feature. The AVL system produces operational information in real time, which includes vehicle location, speed, fuel usage, on-time performance, and historical records. This information is a powerful tool to help manage the system and to identify areas needing improvement. It also enhances the customer experience by

providing next bus arrival information in real time, via personal cell phones, Smartphones and through the transit system's website. This project has been identified in the Transit Master Plan as a vital project to help improve the system's operation.

The FY 2011-12 adopted Transit Capital Projects Fund included a budget of $225,000 for the AVL system purchase, with $180,000 in funding from the state grant and $45,000 coming from the General Fund for the local match. This budget amendment will increase the total project budget by $225,000 to a new total of $450,000. Under the amended budget, the grant provides 90% of the funding or $405,000 and the City provides the 10% local match or $45,000, which was previously budgeted. This project should be completed in 24 months.

This action complies with the current City Council 2012-13 Strategic Operating Plan within the multimodal transportation and fiscal responsibility areas by funding system improvements that are in the long-term Capital Improvement Program and exploring alternatives for enhancing the city's long term financial commitment to master plan implementation, respectively.

The Transit Commission supports the subject action.

Pros:

- The acquisition of an AVL system is part of the Transit Master Plan implementation.
- The project will enable the City to improve the transit system's efficiency as well as the customer experience.
- The North Carolina Department of Transportation will provide funding for 90% or $405,000 of the project.

Cons:

- The total project cost of $450,000.
- The City provides the 10% local match or $45,000.

The total anticipated project cost is $450,000. The City is required to provide a 10% local match in the amount of $45,000, which was already included in the FY 2011-12 Adopted General Fund Budget.

Staff recommends that City Council adopt a budget amendment in the amount of $225,000 from state grant funds to acquire an Automated Vehicle Location system for the transit system.

**ORDINANCE BOOK NO. 27 – PAGE 410**

**S. ORDINANCE NO. 4101 - BUDGET AMENDMENT FOR 2012 LIMITED BOND FINANCING**

Summary: The consideration by City Council of a technical budget amendment to budget: 1) the $10,600,000 refunding component of the 51 Biltmore Parking Facility in the Parking Services Fund; 2) the $10,506,000 refunding of the 1997A and 1997C Certificates and the 2006 Contract in the General Fund; and 3) the $398,000 in execution and delivery costs of the 2012 Bonds in various funds.

On June 27, the City closed on its 2012 Limited Obligation Bond financing. The financing generated $43,448,000 in bond proceeds which are being used to: 1) finance various projects contained in the FY 2012 capital improvement plan such as streets, sidewalks, LED streetlights, City Hall and Civic Center renovations, vehicles and equipment and greenways; 2) refinance the 1997A and 1997C Certificates, the proceeds of which were used to finance and refinance improvements to various City facilities; 3) refinance the City's obligations under the 2006 Contract, the proceeds of which were used to finance two fire stations, vehicles and equipment;

4) refinance the City's obligations under the 2011 Contract, the proceeds of which were used to finance the construction of and improvements to the 51 Biltmore Parking Facility; and 5) finance the costs of the initial execution and delivery of the 2012 Bonds.

The financing was completed at a rate of 2.919% with a final maturity of 2032. The refunding activities generated cash flow savings (new debt service, including all costs compared to the old debt service) of $1,162,000 through 2021 – representing about $129,000 annually.

The FY 2012 budget contained debt financing appropriations for various projects included in the annual capital improvement plan and identified above. The budget, however, did not include appropriations reflecting the refunding components and costs of the transaction. The refunding components are comprised of $10,600,000 for the 51 Biltmore Parking Facility and $10,506,000 for the 1997A and 1997C Certificates and the 2006 Contract. The costs of the execution and delivery of the 2012 Bonds totaled $398,000 – slightly less than 1% of the total bond proceeds. This technical amendment incorporates into the budget the refunding components above and the costs of execution and delivery.

This action complies with the City Council Strategic Operating Plan goal of "Operate the City of Asheville to the highest levels of fiscal responsibility."

Pro:

- Amends the FY 2012 budget to reflect the various actions taken by the City Council beginning in December 2011 with respect to the 2012 Limited Obligation Bonds.

Con:

- None.

As noted above, the refunding activities generated cash flow savings (new debt service, including all costs compared to the old debt service) of $1,162,000 through 2021 – representing about $129,000 annually. The annual debt service payments associated with the 2012 Limited Obligation Bond Financing are included in the FY 2013 Adopted Budget.

City staff recommends City Council approve the technical budget amendment to budget: 1) the $10,600,000 refunding component of the 51 Biltmore Parking Facility in the Parking Services Fund; 2) the $10,506,000 refunding of the 1997A and 1997C Certificates and the 2006 Contract in the General Fund; and 3) the $398,000 in execution and delivery costs of the 2012 Bonds in various funds.

**ORDINANCE BOOK NO. 27 – PAGE 412**

**T. ORDINANCE NO. 4102 - TECHNICAL BUDGET AMENDMENTS FOR WATER CNG VEHICLES AND THE LAKE CRAIG (AZALEA ROAD) FLOOD MANAGEMENT CAPITAL PROJECT**

Summary: The consideration of two technical budget amendments to: 1) move the $56,524 budget for the water department's CNG vehicle purchases from the General Capital Projects Fund to the Water Capital Projects Fund; and 2) combine two previously approved project budgets for the Lake Craig (Azalea Road) Flood Management Project into one single project with a total budget of $4,163,239 funded by Senate Bill 7 and Sullivan Act proceeds.

*Water CNG Vehicles:* On August 10, 2010 City Council approved a budget amendment and accepted grant funds from the Department of Energy's Clean Cities Grant to upgrade a portion of the City's fleet vehicles to CNG. City Council subsequently amended the original CNG project budget on April 10, 2012 to accept additional grant funds. The current budget for the project, which is fully accounted for in the City's General Capital Projects Fund, is $482,227. From this amount, $56,524 was spent to upgrade water department vehicles to CNG. Staff is

requesting that Council approve a technical budget amendment to move this $56,524 from the General Capital Projects Fund to the Water Capital Projects Fund.

*Lake Craig (Azalea Road) Flood Management*: In a prior fiscal year, the City received grant funding through the Senate Bill 7 allocation for the Lake Craig Flood Management (Azalea Road) project. This funding, which totals $2,153,239, was budgeted in the City's Grant Fund. In addition, through a prior year annual budget appropriation in the General Capital Projects Fund, City Council approved the use of $2,010,000 in Sullivan Act funds for the Lake Craig Flood Management (Azalea Road) project. The technical amendment that staff is proposing combines these two separate projects into one single project with a total budget of $4,163,239. Due to the nature of the improvements being funded in this project, the single project budget will include appropriations in the General Capital Projects Fund, the Water Capital Projects Fund, and the Stormwater Capital Projects Fund. The allocation of the budget across these three funds may change once final construction bids are received, but the total project budget of $4,163,239 cannot be amended without Council approval.

This action complies with the City Council Strategic Operating Plan goal of "Operate the City of Asheville to the highest levels of fiscal responsibility."

Pros:

- Allows for more effective accounting and reporting of revenues, expenses and fixed assets.
- Aligns the budget with current accounting procedures.

Con:

- None.

These two technical amendments will have no net impact on the City's overall budget since all of the appropriations above have been previously approved by City Council.

City staff recommends City Council approve the two technical budget amendments to: 1) move the $56,524 budget for the water department's CNG vehicle purchases from the General Capital Projects Fund to the Water Capital Projects Fund; and 2) combine two previously approved project budgets for the Lake Craig (Azalea Road) Flood Management Project into one single project with a total budget of $4,163,239 funded by Senate Bill 7 and Sullivan Act proceeds.

**ORDINANCE BOOK NO. 27 – PAGE 422**

**U. ORDINANCE NO. 4103 - BUDGET AMENDMENT TO BALANCE REVENUE AND EXPENDITURES IN SIX OF THE 2008 PROJECTS IN ORDER TO CLOSE AND INACTIVATE THE PROJECTS**

Summary: The consideration of a technical budget amendment in the amount of $1,711,071.00 to balance revenues and expenditures in 6 of the 2008 Water Revenue Bond Projects in order to close and inactivate the projects.

In order to inactivate 25 older, completed capital projects, the revenue in six (6) 2008 Water Revenue Bond Projects (including Hendersonville Road, Central Business District, Pump Station / Mills River WTP Backup Generators, Valve Installations, and Fairview Tank / South Buncombe Pump/Weston Road) must be balanced. Specifically, the budget amendment reduces the revenue and expenditures budgeted in five projects by $ 1,711,071.00 million to match actual expenditures, and

Once these projects have been balanced via budget amendment, they can be closed as part of the City's annual year-end project close out.

This project is part of City Council's strategic plans to operate the City of Asheville to the highest levels of fiscal responsibility.

Pro:
- Approval of the technical budget amendment will allow six (6) of the 2008 Water Revenue Bond Projects to be balanced and closed in keeping with Generally Accepted Accounting Practices (GAAP).

Con:
- None.

The budget amendment is only a technical adjustment to balance revenues and expenditures in six (6) of the 2008 Water Revenue Bond Projects; therefore, it will have no additional impact on the Water Resources Capital Improvement Projects or Operating Funds.

City staff recommends City Council approval of a technical budget amendment in the amount of $1,716,871.00 to balance the revenue in 6 of the 2008 Water Revenue Bond Projects in order to close and inactivate the projects.

**ORDINANCE BOOK NO. 27 – PAGE 425**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Bothwell moved for the adoption of the Consent Agenda, removing from consideration Consent Agenda items D 1 and 2, H (9 - West Asheville Soapbox Derby event) and L. This motion was seconded by Councilman Pelly and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. ASHEVILLE POLICE DEPARTMENT FORENSIC INVENTORY

Mr. Michael Wright, Manager of Blueline Systems & Services LLC, provided Council with the following report, using photographs to illustrate his points:

"Blueline used applicable crime scene procedures in their work in the Asheville Police Department evidence facility. They first made photographs of the evidence condition in various parts of the property facility. A video tape was also made of the overall scene to show its condition before anything in the facility was touched. There are two systems in use to track evidence within the facility. The older system is a Microsoft access database (ACCESS). It covers the time period from 1980's through December 2005. The current system is referred as RMS. During the first few days of the inventory process, the Blueline staff set out to gain an understanding of the APD property and evidence storage system, floor plan and utilization of the various areas. It quickly became apparent that in some areas a readily-understandable and accurate system existed. In other areas a section of shelving or evidence would be encountered that had no understandable organization at all. Subsequently the location of an item described in the databases was rarely specific enough to narrow down exactly where an item might be located within the facility. It was decided that an independent location system must be created for the purpose of locating missing items and as a reference point for testifying the exact location of evidence, allowing the inventoried items to be located again for court, disposition or verification purposes and to facilitate future audits by the City or other entities. The only accurate and expeditious way to proceed was to design and implement an accurate shelf numbering system

and create three excel databases in which all items could be scanned in or manually entered. Considering the large size of the inventory, the difficulty of locating the items, and the state of the paper records, Blueline had to modify its plan procedures to make the best use of time and money allocated for the inventory.

"In the APD facility, 21,783 items are assigned a code ANBL which means not located in a bin. This contributes greatly to confusion in the facility and difficulty in locating items in a timely manner. Blueline has scanned (or manually entered) the following items from the two filing systems into three excel databases: ACCESS: 12,743 items; RMS: 22,793 items; and unidentified: 286 items for a total of 35,822 items. The location of those items are now identified by shelf and bin number. The fact that an item was not located does not rule out the item being found in the future in an area of the facility not yet scanned. The total items that the RMS systems shows to be on hand is 31,731. The ACCESS database system lists 80,039 items which have been entered since the start of computerized recordkeeping. 26,679 items do not show any disposition in the system. 204 items show a status of being at the SBI (some or most may have been returned). 2,150 items listed as status -0- (it is unknown what this code means).

"Selected items were given a complete examination per the contract. The items in the high risk facility (guns, drugs and cash) were completely scanned for inventory and location purposes. Specific items of evidence were located and completely examined for the purposes of verifying the integrity of the grand jury case evidence from a January, February, March and April of 2011 grand jury sections. Blueline prepared approximately 68 discovery trial-ready packages for grand jury cases and isolated them on shelves and carts. Blueline prepared a binder of grand jury cases and delivered it to the district attorney. Fourteen bankers boxes of currency envelopes were found in the back of the auction destruction room marked "school fund." Much research will be required in the future by APD or some other entity to find the legal status of these currency envelopes. They are marked "school fund" but there is no attached documentation to show what cases or court orders might of assigned those to the school fund. Many items show a disposition of destroyed, yet they are still on the shelf. About 75% of the facility had no shelf numbering system, so it was difficult to describe where anything might be.

"Lack of document scanning and filing has allowed large numbers of dispositions to accumulate on the desks and shelves in the outer offices of the property and evidence facility. Thousands of pages of property reports, dispositions and correspondence have never been filed. There are also 10-15 file cabinets in that facility full of papers that are in various states of organization. The Blueline staff dictated and created an index directory of the numbered box or bin locations in the various sections of the facility, as there was no directory to tell an outside party where anything might be there in the past. Blueline performed a partial organization of seven boxes of paper files from past years which were found in the auction and destruction room.

"Blueline found large quantities of evidence stored on the floor and blocking doorways and isleways and in several areas in the facility the inventory had overflowed the shelving and was piled in the aisles and floors. Blueline had the City of Asheville bring in two 20-foot long containers for storage and constructed 10 metal shelf sections for organizing evidence. As we encountered this evidence, as we removed it, we inventoried it and then indicated in our records where its new location is.

"Blueline prepared a floor plan drawing to show existing and new shelving and area numbers. The drawing is color-coded to show the areas scanned in yellow and the areas yet to be scanned in green. We have indicated where all the new shelf numbers are on this floor plan so future occupants of the room can find where the shelf numbering system is. Blueline did not make any entry into the new property room area. Their work was restricted to the old property room area. They have completed approximately 75% of the shelf space and there is probably 25% left for the City to inventory. Also all of the evidence in the two 20-foot long containers came out of the isleways and corners and general work areas. There is now almost nothing left on the floor, so if there happens to be a flood, the evidence would not be damaged.

"Blueline identified a number of questioned-item packages and referred them to the State Bureau of Investigation. Blueline has worked with and continues to work with the SBI investigators and with the district attorney and staff. In order to draw an accurate file of conclusion, the questions about whether or not cash, drugs or firearms are missing from the facility, thousands of paper documents of hand-written lists may have to be located, examined, entered and reconciled with a specific piece of property in two computer systems.

"We made many detailed and specific recommendations that are in the report that is filed with the district attorney but the recommendations that City Council needs to be concerned with is that the existing paper filing system is not consistent from year to year and the files need to be organized, re-sorted, analyzed and verified and aggressive and continuous purging policy and program must be implemented to get the inventory of the facility under control and to prevent the inventory from outgrowing the storage capacity. Since items of critical importance were found throughout the facility, the entire facility must be scanned and searched in order to definitely state that an item is missing. The evidence from the new evidence facility cannot be combined with the evidence from the existing facility until sufficient purging has occurred to allow the new evidence to be stored separately and until such time as the district attorney and SBI have reviewed the facilities and approved the plan for combining the facilities. It is the recommendation of Blueline that the City employ a minimum staff of 4 persons, and preferably 6 persons, dedicated to restoring the old property room to proper order. We believe it could take two years to accomplish the following tasks: complete the inventory; file and organize and research the existing paperwork; verify and update the computer records; research and purge the existing inventory by the following actions: (a) return the items to the owner if appropriate and possible; (b) research and carry out the orders of the court and the district attorney, if any; (c) auction off and destroy items as required; and (d) preserve and retain evidence involved in an existing or unsolved case. To prevent a reoccurrence of any of the problems which have plagued the old property room, Council should see that the Police Department has adequate staff, resources and facilities to operate the new property room in accordance with nationally accepted standards. The recommended staff level for the new property room is 4-6 persons. Considering both property rooms, that would be a total staffing level of 8-12 persons and all property and evidence staff should receive specialized training in property and evidence management and in software. Blueline has performed the work in the APD facility with an eye for the future laying the foundation for a system which will make future internal audits, purging and operational issues more accurate and efficient. Blueline staff will be available for a transition period when the new property and evidence staff transitions back into the facility to familiarize them with the new computer system, document management functions and shelf-numbering layout.

"Blueline received excellent cooperation and logistical support from APD and the City of Asheville staff and has received excellent support from the Buncombe County IT and CJIS staff in hardware configuration and the development of a specialized software application. This application can be used for APD's internal audit process in the future."

Mayor Bellamy said that it is appalling to look at the situation in the evidence room. Our police officers work hard and to put their hard work in the evidence room in that situation is disheartening. She hoped Council would support her by giving the Police Chief the tools he needs to be successful in creating an evidence room that we can all have faith in and support.

When Councilman Bothwell asked if the mishandling has been consistent, Mr. Wright said that at certain periods of time the handling was perfect and at some times the handling was not so close to the standards. It basically runs to different areas of the facility rather than to either one of the software systems. One thing that contributes to it is the fact that evidence is collected 24/7 and occasionally after a major crime or an event with a lot of arrests a bulk of evidence comes in and overwhelms the staff. Also, another thing that contributes to this is it's hard to purge the evidence. Purging is not an easy process. You can bring a piece of evidence in five minutes but to get rid of a piece of evidence you have to research the state court records, which

are in no way computer linked with any local agency records, and the state uses different case numbers to refer to the property. If a person is arrested and property is taken, they may be arrested several times over a few months and have property under his name under several arrests. Those cases might be consolidated for judgment. When the orders from the court come over, they simply state the case involving that person has been adjudicated and the evidence may be destroyed or released. It then turns into a research project for the staff to research what pieces of evidence might be associated with that. There is also a danger that the evidence might be associated with another defendant – if two people were in a call and robbed a store and the gun is involved in both cases. If one case is adjudicated, it's possible that the gun could be released or destroyed without being linked to the other case. Some software work needs to be done and a committee of the stakeholders at the Police Department, the court system, the DA's office and the City, County and State IT people need to work together to establish a system that makes purging evidence more straightforward.

When Councilman Bothwell noted that Blueline paid particular attention to the more serious items (guns, drugs and money), he asked if those items were in better or worse disarray than other evidence. Mr. Wright said that they were about the same as the rest of the facility. He said those types of things are more densely packed. The areas Blueline has already completed are your densely packed areas. Those are areas that there are hundreds of envelopes in a box. In the areas that are not scanned yet, there are a lot of bulky items, like a bed pillow wrapped up in brown paper, or a cash register from a store, or a tire, etc. He believed Blueline has made contact with most of the evidence because the items in the area they were unable to get to during the term of the contract are more bulky materials, not to say there couldn't be something of value in that area. The bulk of the evidence has been handled. In the auction destruction room, a full examination, either by Blueline or by the SBI with their assistance, was conducted of a good portion of the evidence in that facility. They worked with the SBI for approximately 100 hours since this was completed.

In response to Councilman Hunt when he asked if the new and old evidence rooms could be merged after the old property room is brought up to order, Mr. Wright replied that they can. He said that if the recordkeeping in the old room is brought up to code and is accurate there is no reason evidence couldn't be handled in one facility. In informal talks with the new evidence room staff, he believed that they have overcome most of the problems. One thing that also contributed to confusion in the old evidence room is the duplication of numbers. City staff has assured his that they have corrected that in the way they are using the software now in the new evidence room. However, there is a duplication of numbers between the two systems, and that has contributed to some confusion in previous internal audits.

Councilman Pelly said that there has been a lot of pressure on City Council to direct the district attorney t release the results of the finding, but what he understands from this report is that this audit is still not complete. Mr. Wright said that was correct. He said the City authorized $175,000 for the audit. When they approached that deadline they waited until someone let them know how they want to proceed. It was decided that the City continue the rest of the audit. We were informed to keep custody of it for while until the SBI decided how they were going to proceed and until they had finished their investigation. At some point we handed it back over to the City. Blueline gave the new property room staff about ½ day of orientation and they are available for more orientation if needed. If the City would like Blueline to complete the task, they could do that with another contract negotiation or the City could finish it.

Mayor Bellamy noted that Police Chief William Anderson took office on March 1, 2012, and had no part of this process but he inherited it. When she asked what the process is going forward, Chief Anderson said we are advertising for a new property manager and should have that person on board near the end of August. As far as the old property room, it was turned back to the APD's custody. Basically that room is still sealed with the exception of having to go in there to retrieve evidence for court cases. We have suspended all disposal of any item until we have a chance to review the audit and the new property manager is on board. We will have to

start from scratch and touch every single piece of evidence in both the new and old property rooms. We will go through the entire rooms, re-organize, catalogue items, and follow-up on the recommendations of Blueline. We will work with the DA's office to establish clear policies when it comes to the disposal of evidence.

In response to Mayor Bellamy, Chief Anderson said they will be looking at a total redesign of the room, how evidence is collected and stored in what areas, and the whole process for cataloging and retrieval. They will be working with the International Association of Property Managers. The President of that Association came to Asheville, looked at their facility and will be providing recommendations. All of it will be reorganized.

When Mayor Bellamy asked for a timeline for completion, Chief Anderson said they will start as soon as the new property manager is hired. The estimate of two years is on the conservative side. He felt it would take longer than that to go through that room and completely do what we need to do to get it in proper prospective, as it should be. We can initially start, but we need to keep in mind is that in order for us to establish creditability and to ensure that this operation is operating in a manner that it should, we will touch every piece of evidence again. That will take some time.

In response to Mayor Bellamy, Chief Anderson said that one of the delays that we may keep in mind is that in order for us to move forward in getting the new property manager in place, we really need to see the audit that is in the custody of the DA. We need to look at all the recommendations in that audit and look at exactly the findings that Blueline identified. That basically will be the roadmap to take us where we need to go.

Mayor Bellamy said that one way the Council can help in this process is for City Council to write a letter requesting the audit in order to help Chief Anderson complete this task.

Mayor Bellamy asked for a quarterly update on the progress of the evidence room. City Manager Jackson said that a separate update will be given during the quarterly reports.

Councilman Bothwell noted that the state court system uses a different numbering system and suggested that as part of our legislative agenda next year to ask that the legislature fix that system for the entire state. This is not just Asheville's problem. Chief Anderson responded that this is something they can look at with the DA's office. We have already entered into discussions about how we can streamline the system and come up with a more productive system to where maybe those two case numbers can be combined. We are also looking at the destruction process of how we can be on the forefront of getting rid of some evidence instead of having it stored for a long time in the evidence room. We have already started discussions with the DA's office on how to fine tune some of these issues.

In response to Councilman Hunt, Chief Anderson said they will look at the inventory system established by Blueline and see if that system is what we need to accomplish the goals of getting this room back on track. Regardless of what system we use, we will have to go through every piece of evidence and work with the DA's office to issue destruction orders for items that need to be discarded. The work that Blueline has done has been very helpful.

In response to Councilman Smith, Chief Anderson said that when a piece of evidence comes in, it is logged into evidence and then taken by the evidence custodian to be stored in the new property room. In the new evidence room we have 6 officers, although 3 are returning to road duty, which will leave us with 3 officers and a sergeant assigned to the property room. All employees who were present when problems were on-going are not still employed with the Police Department. Any prosecutions are up to the DA's office. Basically, he has been told by the DA is that audit has not been released because of the ongoing SBI investigation. The DA has not indicated one way or the other where there is any case in jeopardy.

In response to Councilman Smith, Chief Anderson said that part of the discussions with the DA's office is the purging system and how we can streamline it and make it more efficient.

In response to Councilman Bothwell, Mr. Wright said regarding the thousands of loose papers, he recommended the City contract with some document management expert company to see if there is an optical character recognition that can pick up on the words. Most of those documents are hand written and some are in carbon paper form. They will be difficult to deal with. If an item is missing out of the evidence room, it might have been released and there could be a form filed in one of those cabinets that is not in order. The document management function is almost a separate problem.

Mr. Wright said that the International Association for Property Evidence recommends that most of your property management systems be able to export the data in a CSV format. Blueline has put this in that format so it can be imported. The City's software is made by Sungard OSSI. Sungard OSSI for a fee can write a special program to make it work on a customized basis for the particular situation. He neglected to mention that there is a field on the existing software that he didn't think was being using in the distant past, but since this problem came to light there has been some effort to have the magistrates and the APD officers coordinate that case number at the inception of the case. Some progress may have been made in that area. Another thing, when things go to district court hundreds of cases are disposed of a day and the ADA and the Court Clerk may not know there is evidence (may be a backpack the defendant had when arrested but did not pick up when released) in the case and no order is every issued by the Court to deal with that evidence. That needs attention also. If you can deal with the massive flow of evidence and get it moved out in a timely manner that would prevent it from outgrowing the facility.

In response to Councilman Davis, Mr. Wright said the sensitive parts are done. He thought the SBI is satisfied that the Police Department could take the evidence room back over. The APD can certainly finish this and Blueline can train them how to do it. The software system Blueline put in place is not a permanent total fix. The software package the City has is perfectly capable of managing the entire operation, it's just a matter of the fact that since incorrect information was put into it to begin with, or no information was put into it about the disposition of some items, and since the shelves were not numbered, we had to have a specific way of finding those things. Since items were placed in there with a description of "main room" with no bin location, a lot of search time would be involved in finding it. The only efficient way to proceed was to number the shelves, number the cardboard boxes and scan everything in there.

In response to Councilman Davis, Mr. Wright said that the APD is capable of assembling the vest old inventory to be disposed of (most expeditious way is to take one shelf at a time), research each item, ask the DA to sign off that they are ready to be disposed off and potentially a court order might have to be signed.

When Councilman Davis asked if there was any way of expediting the process of getting personal property back to victims of crimes, Chief Anderson said that would be part of the disposal process. There are two types of property – property found or property turned in with no connection to a criminal case. We can review those and make every attempt to locate the owner and dispose of those items we can't locate an owner. Evidence that is tied to a criminal case, we would have to research that evidence and those cases we may need to get a court order.

When Councilman Hunt asked if some of the recommendations would affect our current operating budget, City Manager Jackson said we are currently staffing two property rooms now and hope to be able to scale that down once we merge the two rooms. We still have the investments in the software system and the renovation and redesign of the building. Chief Anderson agreed and said that once we get the new property manager hired and evaluate the process, they will make a determination as far as staffing, but they expect to do that within their existing numbers.

Mayor Bellamy suggested contracting with City Clerk Maggie Burleson as she has extensive experience with documents that need to be scanned and indexed in an efficient and effective manner. Over the years she has done that for the City's history. As you look at a plan to get those documents in order, she felt she would do a wonderful job.

At Mayor Bellamy's suggestion, it was the consensus of Council to instruct the City Attorney to draft a letter requesting the District Attorney recommendations based on the information received from Blueline regarding future management practices for the police evidence room.

When Mayor Bellamy asked if Ms. Leann Melton, Buncombe County Public Defender, would like to speak, she said that because she has a pending case now, the Rules of Professional Conduct prohibit her from making any specific comments.

Vice-Mayor Manheimer clarified that what is going on presently is we have a streamline intake procedure now for all currently occurring cases and we have a new evidence room. What we are talking about here is all of the evidence that exists for prior cases which most cases have probably been disposed of. There may be a few still pending and those are the very important ones where cataloguing all this evidence is imperative so that the integrity of the evidence can be maintained for the handling of those suits. It is a two-part situation where we have evidence concerning past cases and then the current in-take procedures. She wanted to make it clear that this is absolutely and completely addressed for anything that has recently occurred and going forward and we are talking now about how to finalize the clean-up of the past cases and evidence that pertains to them.

Vice-Mayor Manheimer also clarified that the section of the evidence room where there are funds designated for the school board. In North Carolina, fines must be remitted for funding of the school system. She felt that's why there would be funds designated in that way.

On behalf of City Council, Mayor Bellamy thanked Mr. Wright for his informative update and his services on behalf of the citizens of Asheville.

**B. REVIEW OF LAND USE INCENTIVE POLICY**

Community Development Director Jeff Staudinger said that in March of 2011, City Council adopted a Land Use Incentive Policy that provided incentives "to encourage development projects that fulfill important public purposes... directly addressing annual strategic goals set by Council. It offers discretionary approval of incentives that Council may choose to grant projects they believe best achieve their goals." Council directed that the Policy be reviewed one year after its adoption.

In the one and a half years since the policy was initially approved, two applications for the Land Use Incentive Grant have been received and approved. One of the projects is nearing the end of construction; the other has not begun construction.

The existing policy has been reviewed and discussed by the Housing and Community Development Committee, the SACEE Committee, the development subcommittee of the Riverfront Redevelopment Commission, and others. Generally, these groups agree that most elements of the existing policy, without evidence to the contrary, should remain in place until a larger review of policy direction regarding land use incentives occurs. Some short term suggested changes are:

1. Include certain additional major routes- such as Swannanoa River Road from Hendersonville Road to Tunnel Road- as eligible areas for the incentive.

2. Target other areas strategically chosen for development or redevelopment- The River Arts District, for example.
3. The HCD Committee suggests that staff develop a proposal for extension of the LUIP to targeted areas that are related to the bicycle and pedestrian master plan, and other relevant master plans.
4. Use information developed by The Center for Neighborhood Technology, in their report Location Efficient Affordable Housing for a More Sustainable Asheville, to additionally identify "location efficient" areas in Asheville.
5. Assign Brownfield Redevelopment a higher point award to strategically target incentives for the redevelopment of these parcels.
6. Staff provide a cost-benefit analysis to determine the relationship between the allowable grant under the policy and the costs of providing City services to the proposed development.

More importantly, the review of the Land Use Incentive Program leads staff to consider the larger question of incentives and development. Questions include:

- What growth, in what locations, can be spurred by incentives?
- What are the specific outcomes sought by the City in its growth strategies?
- What incentives have proven successful in creating desired growth outcomes?
- What incentives are already available? Are they effective? Are they transparent, manageable, accessible?

Staff recommends that continued revision of the Land Use Incentive Policy, to reflect priority development areas as determined by Council, be made as needed; and that the staff review of projects for Council consideration include a cost of services estimate as part of the fiscal impact review.

Staff proposes to develop additional information for Council to consider regarding development incentives, for presentation at a later date.

Mr. Staudinger responded to Councilman Hunt regarding the medium area income vs. average wage pay.

Councilman Smith hoped that as the credit markets loosen up, they will see this is a very useful tool. Some short-term suggested changes, he would be in favor of learning more about those so we can continue to adjust to them. He was also interested, at some point, to re-visiting some of the density issues in residential areas.

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING HUNTER APARTMENTS, LOCATED AT 25 & 27 WASHINGTON ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING TO ALLOW FOR THE REMODEL OF TWO EXISTING RESIDENTIAL STRUCTURES INTO TWO DUPLEX STRUCTURES FOR A TOTAL OF FOUR APARTMENTS

Urban Planner Julia Fields said that this public hearing was continued from June 12, 2012, and that this is the consideration of an ordinance to conditionally zone Hunter Apartments, located at 25 & 27 Washington Road from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning, to allow for the remodel of two existing residential structures into two duplex structures for a total of four apartments. This public hearing was advertised on June 1 and 8, 2012.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property.

Ms. Fields said that Ervin and Barbara Hunter, owners/petitioners, through their agent David Straub, have submitted an application for conditional zoning for the property located at 25 and 27 Washington Street (corner of Washington and Broad). The request is for rezoning from RM8 (Residential Multi-Family Medium Density) District to RM16CZ (Residential Multi-Family High Density Conditional Zoning) District to allow for the creation of four dwelling units in two existing residential buildings on the property. One of the dwellings is a three story structure (27 Washington Road). The other (25 Washington) is a two story structure.

The property, .33 acres in size, has by all indications been used for apartments in the past although the buildings have been vacant for some time. Meter account records obtained from Progress Energy and dated August of 2011 confirm that there were six meters on this property at that time. Proposed renovations to the buildings were begun approximately sixteen months ago without permits being obtained by the building contractor. The City issued stop work orders and the applicants now wish to proceed to make the apartments conforming, working with a new contractor. RM8 zoning would only allow for two units on the property. The conditional zoning is necessary to allow for four units. While not proposing to come under the City's affordable housing programs, the rental price points planned for the units are comparable.

A mix of uses is found in the area around Washington Road and Broad Street. Offices, institutional uses, and single-family and multi-family residences are all found in close proximity to 25 and 27 Washington Road.

A modification to the side setback on the southern property boundary is needed. One of the existing structures extends two feet into the required six foot side setback. Because the structures are existing staff is supportive of this request.

At a meeting on April 16, 2012, the Technical Review Committee reviewed and approved with conditions the conditional zoning application. The applicant has resubmitted since that time and addressed many of the comments.

On May 2, 2012, the Asheville Planning and Zoning Commission reviewed this application and voted 5-2 to recommend it for approval. Concerns were expressed by several area residents related to occupancy (duration and numbers) and management of the property. Since that time Mrs. Hunter and representatives working with the Hunters on this application met with neighborhood residents and property owners to discuss their concerns.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project, if approved, must meet all the technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications Manual with regard to public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   There are no significant natural features on the site that warrant mitigation. The buildings being rehabilitated are existing buildings.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The buildings being rehabilitated for the apartments previously contained multiple units. The buildings are in disrepair and the proposed improvements should positively impact property values in the area.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The buildings being renovated are existing buildings and very much in character with other residential structures in the vicinity. There are a number of larger office and institutional uses in close proximity as well.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   This development supports the goal of promoting adaptive reuse of vacant structures while ensuring that neighborhood compatibility is met. It also supports the goal of producing affordable housing in convenient locations. Additionally, it supports Council's objective of creating affordable rental opportunities and the objective of promoting sustainable, higher-density, infill growth that makes efficient use of existing resources.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The proposed use is in a location convenient to transit routes and employment/business centers. TRC indicated no issues with service provision at the meeting on April 16.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   Only four units are proposed in this development.

Pros:

- The proposed development meets a number of Council objectives and goals established in the comprehensive plan.
- The proposed development renovates two dilapidated structures.
- The suggested price points for the development are comparable to those established by the City for affordable rental housing.

Con:

- The development will contain two units more than would be allowed under the current zoning.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable with the conditions listed as follows, and with the setback modification requested. At a meeting on May 2, 2012, the Asheville Planning and Zoning Commission voted 5-2 to recommend this application to you. (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10 of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with this ordinance, will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; and (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards.

Mayor Bellamy opened the public hearing at 6:48 p.m.

The following individuals spoke in support of the conditional zoning for various reasons, some being, but are not limited to: applicant did not know their contractor did not have a license to do the work until they received a Notice of Violation from the City; applicant is in the process of trying to get the houses fixed up; property manager has formed a team of an engineer and builder to rehabilitate the houses so they can become a viable part of the community; the applicant wants to build four units of affordable housing; the project will be costly and the applicant is willing to invest in the property; the applicant is currently taxed almost $5,000 a year letting it sit there; need for more affordable housing; the applicant has demonstrated good faith in repairing the stabilizing the wall; the applicant is willing to spend money to fix the houses which are eyesores, abandoned and dilapidated which will in turn bring in a return on their investment; and if the property is not conditionally zoned the neighborhood will be stuck with the dilapidated houses:

Ms. Barbara Hunter, applicant and owner of 25 and 27 Washington Road
Ms. Lisa Roberts Allen, property manager for 25 and 27 Washington Road
Pastor Victor Burgin
Mr. Dave Smith, representing the firm which was retained to provide repairs to the existing all, a site design to meet the City's standards and rehabilitation plans to restore the homes
Ms. Sophie Dixon
Mr. Brian Anderson
Mr. Saul Chase, Broad Street resident
Ms. Claudia Tucker, West Chapel Road resident

The following individuals spoke in opposition of the conditional zoning for various reasons, some being, but are not limited to: applicant should fix the houses back to what they were – single family homes; the neighborhood is threatened by commercial sprawl; the homes might be converted into another low income group home which they already have in their area; the houses have been inhabitable for years with only pigeons and rats living there; request for more single family homes with young children; present zoning already allows for the appropriate use of these properties; property owners have demonstrated by past practices that they are not capable of managing these properties as multi-family units; neighborhood has no confidence that the current property owners can properly complete the proposed restoration and they have no confidence that the project would thereafter be managed properly; RM-16 zoning is not appropriate on the corner in this neighborhood; and the property has been dilapidated for 20 years and the property owners have not taken care of it:

Rev. Christopher Chiaronmonte
Mr. Paul Conrad, Broad Street resident
Ms. Kate Fisher, Madison Avenue resident (presented Council with a petition containing 38 signatures)
Mr. Jim Siemens, Washington Road resident

Mayor Bellamy closed the public hearing at 7:18 p.m.

In response to Councilman Hunt, Ms. Fields said that the conditional zoning is for apartments and not a group home. A group home would need an entirely separate permit and they would have to undo the conditional zoning. She believed what is in the area are family care homes, which are small homes addressing a lot of the same kind of issues as family care homes. Per state law, family care homes are allowed in every residential district. Assistant Planning & Development Director Shannon Tuch explained the differences between a family care home and a group home. It is possible that one of these units could become a family care home if it complied with all the other standards and one of the primary standards that we have is it has to be 600 feet from another family care home.

In response to Councilman Bothwell, Ms. Tuch said that if the lot line were changed from one lot to two, there could be two single-family homes each with an accessory apartment.

In response to Councilman Pelly about off-street parking, Ms. Tuch said that per the Unified Development Ordinance (UDO), the requirement for off-street parking is based on the number of bedrooms. However, this property is within ½ mile of the Central Business District which doesn't require any off-street parking. What is shown complies with our minimum standards.

Ms. Fields responded to questions raised by Councilman Pelly regarding the zoning prior to the UDO which was adopted in 1997.

In response to Councilman Pelly, Ms. Fields said that with conditional zoning, you have to start construction work within two years or it reverts back to the previous zoning. They would have to get permits and initiate work. Once they get permits there are all kinds of triggers for maintaining that permit based on continuing work.

Mayor Bellamy confirmed that one structure looks like it had 2 units in it and the other structure is a single-family house. Ms. Fields said that the applicant is applying for 4 units: two units in one structure – one with four bedrooms and one with two bedrooms; and two units in the other structure – both with two bedrooms.

Councilman Smith agreed that the house is dilapidated. Because it is a diverse neighborhood, room behind the house for parking, nice new retaining wall, multi-family across the street, and close to downtown he felt this sounds like a great candidate for the kind of infill that we are looking for, especially since the property owners are seeking grants to ensure that this will be affordable housing. He felt the neighbors are concerned that if this moves forward, there will be the kind of management that they can be confident in and uphold the neighborhood.

In response to Councilman Smith about how the property will be managed, Ms. Roberts-Allen said that she would be managing the property. They will be adhering to the normal lease requirements and running background checks. They will make sure that the people who live in the units will adhere to the community.

When Councilman Smith asked what would happen to the property should Council not approve the conditional zoning, Ms. Roberts-Allen said the property will continue to sit as it is. She said that when Mr. and Mrs. Hunter invested in the property there were 5 or more units. They were rented on a continuous basis. Mr. Hunter then got sick and they were not able to do anything with the property. They have now complied a team to make the property a benefit to the neighborhood.

When Councilman Smith asked if the builders be amenable to limiting the construction to four units, Ms. Roberts-Allen replied yes. She said they will limit the non-related tenants to 3, not 5.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4104, to conditionally zone Hunter Apartments, located at 25 & 27 Washington Road from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning, with the requested setback modification, to allow for the remodel of

two existing residential structures into two duplex structures for a total of four apartments, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10 of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with this ordinance, will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application; and (6) The number of units be limited to four. Any deviation from these plans may result in reconsideration of the project by the reviewing boards. This motion was seconded by Councilman Hunt.

City Attorney Oast said that if the property is rezoned, the rezoning follows the property. Council needs to make their decision based on appropriate land use consideration and not on the basis of who may be operating the facility. Also information was presented that if the rezoning is not grant, the project will sit vacant. He did not think Council should consider that information in making their decision.

Councilman Davis expressed concern with the valid protest petition. He recalled when the RS-8 zoning was restored to the area. There are certain things zoning protects and even as we strive for greater density it is already a fairly dense neighborhood. He felt the property will have value if restored to its prior use.

Councilman Pelly didn't take the petition filed lightly and understood the concerns of the neighborhood. At the same time he sees a proposal to renovate two houses on their existing footprints. As a Realtor, he knows that abandon houses depress surrounding property values and a renovation will raise values for the entire neighborhood and get rid of an eyesore. This was previously multi-family housing with a higher density zoning prior to adoption of the UDO.

Vice-Mayor Manheimer is familiar with this neighborhood and sees the struggle where every other house is a single family home and then rental properties and some family care homes. She is concerned that this application is caught in the cross-fire of what is really the problem and that's the issue of the family care homes, which have a high level of legal protection that City Council can't address. She was concerned that if we move this into a multi-family rental that we may impact the trajectory of this neighborhood recovery. On the other hand, people have moved into the neighborhood where there are clearly commercial uses throughout the neighborhood. If Council does not approve the conditional zoning, she hoped there would be some effort to find some other remedies to get the properties fixed up.

Due to a valid protest petition, the motion made by Councilman Smith and seconded by Councilman Hunt failed on a 5-2 vote, with Vice-Mayor Manheimer and Councilman Davis voting "no".

At 7:48 p.m., Mayor Bellamy announced a short recess.

**ORDINANCE BOOK NO. 27 – PAGE 428**

**B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING FOR WHITE OAK GROVE APARTMENTS LOCATED AT 275 AND 281 HAZEL MILL ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY DENSITY DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF 92 APARTMENT UNITS HOUSED IN THREE BUILDINGS**

On June 26, 2012, Mr. Robert Grasso, applicant, requested City Council to continue his public hearing until July 24, 2012, since a valid protest petition has been received which required 6 out of 7 Council members to vote in favor of his application and Councilman Hunt was absent from that meeting.

On July 19, 2012, Mr. Robert Grasso, applicant, requested City Council to table the proposed apartment project indefinitely. Therefore, Councilman Hunt moved to table the conditional zoning for White Oak Grove Apartments located at 275 and 281 Hazel Mill Road indefinitely. This motion was seconded by Councilman Pelly and carried unanimously.

**V. UNFINISHED BUSINESS:**

**A. ORDINANCE NO. 4096 - ORDINANCE AMENDING THE CURRENT SKATEBOARD ORDINANCE TO PERMIT SKATEBOARDING ON DESIGNATED CITY-MAINTAINED ROADWAYS AND CROSSWALKS IN THE DOWNTOWN CENTRAL BUSINESS DISTRICT**

Assistant City Attorney Kelly Whitlock said that this is the consideration of an ordinance amending the current skateboard ordinance to permit skateboarding on designated City-maintained roadways and crosswalks in the downtown Central Business District (CBD).

The City's current skateboard ordinance prohibits skateboarding upon any roadway, except while crossing a street on a crosswalk. This prohibition applies throughout the City, regardless of the district in which the roadway is located. The current ordinance also prohibits skateboarding upon any sidewalk in a business district. This particular prohibition applies in business districts only; skateboarding is allowed on sidewalks in all other districts. The language contained in the City's skateboarding ordinance has remained unchanged since the City's Code of Ordinances was codified in 1965.

At the April 24, 2012, City Council meeting, Council requested staff to draft an ordinance to allow the use of skateboards for transportation, using the four wheels down model on roadways, crosswalks and bike lanes (where available) within the CBD for Council consideration. Council also requested information about cities nationwide that permit skateboarding in their downtown areas and whether that permission expanded to streets outside the downtown area. City staff identified the following cities which allow skateboarding in some form:

Benchmark National Cities:

- Portland, Oregon: Allows skateboarding on sidewalks and roadways except for certain streets and sidewalks in the downtown area with the following restrictions: 1) persons under the age of 16 must wear protective headgear; 2) operator must be equipped with lighting equipment between hours of sunset and sunrise and 3) operators are granted all rights and responsibilities applicable to bicyclists
- Grand Haven, MI: Allows skateboarding on roadways unless used in an intentional, reckless, careless or negligent manner which causes or could cause any injury to the rider, to any other person, or cause damage to any property; no skateboarding on the boardwalk or on sidewalks along Washington Avenue (within the CBD) from May to Labor Day
- Oxford Village, MI: allows skateboarding in downtown area and other roads but operators are prohibited from obstructing any street, sidewalk, parking area, public place/building or any other place or building by impeding the passage of vehicles, traffic or pedestrian
- Columbia, MO: prohibits skateboarding on sidewalks in downtown area; allows skateboarding on all streets in downtown areas (CBD) unless the use is prohibited; operators granted all rights and duties applicable to bicyclists including duty to obey all traffic control devices and signs and subject to the following conditions: 1) stay to the far right of the road 2) operate the device with the flow of traffic; 3) operate the device in

careful and prudent manner; 4) wear reflective clothing and 5) be equipped with a front facing lamp and rear facing red reflector at night
- Tacoma, WA: allows skateboarding on roadways and sidewalks; helmet required
- Lake Havasu, AZ: allows skateboarding on public roadways with less than four lanes or with speed limits less than 35 mph; on sidewalks outside the CBD and on public property where allowed, subject to the following conditions: 1) abide by all traffic control signals and devices; 2) operate at close proximity to the curb or outer portion of the roadway; 3) signal turns; 4) yield to pedestrians; 5) persons under age of 16 must wear protective helmets and 6) safety gear must be worn from dusk to dawn.
- NCSU Raleigh, NC: Skateboarding is allowed on campus; grinding (i.e. frictional contact between any part of the skateboard and a ledge, plant, or bench) and reckless operation prohibited

Highways (synonymous with streets) are defined by state law as property or right-of-way lines that are open to the use of the public as a matter of right for the purposes of vehicular traffic. Vehicles are defined by state law as every device in which any person may be transported upon a highway, excepting devices moved by human power; provided bicycles are deemed vehicles. Accordingly, the North Carolina Department of Transportation (NCDOT) takes the position that skateboarding is not allowed along state-maintained highways and streets as skateboards are not considered vehicles by state law.

Furthermore, pursuant to N.C.G.S. §160A-296(a), cities have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority is vested in the Board of Transportation. Therefore, the City does not have the authority to regulate the use of skateboards on state-maintained streets. The City's CBD contains the following state-maintained streets:

- SR 3548 (Clingman Avenue) from Hilliard Avenue to Patton Avenue
- SR 3602 (Haywood Street) from Patton Avenue to I-240 Eastbound on-ramp
- I-240 Westbound and Eastbound on/off ramps located west of Clingman Avenue
- US 25 (Southside Avenue) from Coxe Avenue to SR 3214 (Biltmore Avenue)
- SR 3214 (Biltmore Avenue) from Short Coxe Avenue to US 25 (Southside Avenue)
- US 25 (Biltmore Avenue) from US 25 (Southside Avenue) to Patton Avenue
- US 25 (Broadway) from Patton Avenue to Woodfin Street
- SR 3284 (South Charlotte Street) from US 25 (Southside Avenue) to US 70-74A (College Street)
- US 70-74A (Charlotte Street) from SR 3284 (South Charlotte Street) to Woodfin Place
- US 70-74A (College Street) from SR 3284 (South Charlotte Street) to the Beaucatcher Tunnel
- NC 694 (Town Mountain Road) from US 70-74A (College Street) to College Place

Transportation staff also reviewed and identified several streets in the CBD that have high vehicular and pedestrian traffic, on-street parking, bus routes, narrow widths, and street conditions that may contribute to safety concerns of pedestrians and skateboarders. In order to avoid off-limit state-maintained streets and to minimize safety concerns along those identified streets in the CBD, staff recommends allowing skateboarding on the following designated City-maintained streets which would form a skateboarding transportation network within the CBD:

- South Lexington Avenue and North Lexington Avenue from US 25 (Southside Avenue) to I-240
- Coxe Avenue from US 25 (Southside Avenue) to Patton Avenue
- Asheland Avenue from Hilliard Avenue to Patton Avenue
- South French Broad Avenue and North French Broad Avenue from Hilliard Avenue to Haywood Street
- South Market Street from US 25 (Biltmore Avenue) to South Pack Square

- Church Street from South Lexington Avenue to Hilliard Avenue
- South Spruce Street and North Spruce Street from Eagle Street to Walnut Street
- Flint Street from Hiawassee Street to Haywood Street
- Rankin Avenue from Walnut Street to Hiawassee Street
- Walnut Street from Rankin Avenue to North Spruce Street
- Hiawassee Street from Flint Street to Rankin Avenue
- Haywood Street from North French Broad Avenue to Flint Street
- Eagle Street from South Market Street to South Spruce Street
- Hilliard Avenue from SR 3548 (Clingman Avenue) to US 25 (Biltmore Avenue)
- College Street from North Spruce Street to US 70-74A (College Street)

If the subject action is approved, the Transportation Department and the Asheville Police Department would work closely together to come up with a suitable method to physically designate the allowable streets which could include signs and/or pavement markings.

The ordinance is subject to the following provisions: (1) Operators shall wear an American National Standard Institute approved helmets while operating; (2) Operators shall obey all traffic laws and shall keep to the right of the lane of travel, using bike lanes where available; (3) Operators shall yield the right-of-way to pedestrians; (4) Operators shall have all wheels of a skateboard in contact with the ground at all times while operating; and (5) Operators shall not operate a skateboard after sunset or before sunrise.

This action complies with the City Council Strategic Plan in the focus area of "Multi-modal Transportation" by expanding multi-modal opportunities for citizens throughout downtown but conflicts with the focus area of "safe" due to the increased traffic safety dangers to the skateboard operator, pedestrians, and motor vehicles.

Pros:

- Expanded multi-modal opportunities for citizens throughout downtown.
- High vehicular and pedestrian traffic, on-street parking, narrow widths and street conditions considered in designation of certain City-maintained streets in order to minimize safety concerns

Cons:

- Traffic safety dangers to the skateboard operator, pedestrians, and motor vehicles.
- Topography of designated City-maintained streets contribute to traffic safety dangers
- Potential conflict with bicyclists in designated bike lanes

The signs and/or pavement markings that would be needed to identify the designated streets that can be used by skateboarding would be the only fiscal impact and is currently estimated to be about $1,000.00. This money is included in the current Transportation Department's operating budget.

If Council approves of the proposed changes, adoption of the ordinance is recommended.

In response to Councilman Smith, Director of Transportation Ken Putnam showed Council a sample sign to be used to alert motorists that skateboarding is allows on that particular street.

In response to Councilman Smith, Police Chief William Anderson said it would be difficult to enforce the four wheels down rule. The action would have to be witnessed by the officer in

order to issue a citation and make sure that we have knowledge of the exact streets that skateboarding is allowed on.

Councilman Smith said that there is a lot of interest among the people who are skateboard commuting. The map of the designated City-maintained streets which would form a skateboarding transportation network within the CBD doesn't have a lot of connectivity. He hoped the skateboarding community would use various strategies to educate the skateboarders. He would like to adopt the ordinance for a trial period of six months to see if it's successful or not.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith moved for the adoption of an ordinance to allow skateboarding us in the Central Business District per the recommendations in the staff report with a City Council review in six months. This motion was seconded by Councilman Pelly.

The following individuals spoke in support of the ordinance:

Owner of Push Skate Shop in downtown Asheville
Rev. Christopher Chiaronmonte
A skateboarder in downtown
Mr. Kevin Haney

In response to Councilman Bothwell, Mr. Putnam said that as we extend the bike lane system the intent would be to extend the skateboard system too.

Councilman Bothwell suggested plain clothed police officers on skateboards, which would be cheaper than cars and bikes.

Councilman Hunt could not support the ordinance from a safety standpoint. He felt the challenges for police enforcement of the ordinance would be too difficult.

Councilman Pelly felt that some enforcement would be easily identified, such as someone not wearing a helmet or someone riding after sunset or before sunrise. He too had concerns about safety; however, he felt we need to give it a chance for the six-month trial period. He would look to the leaders in the skateboard community to set an example and get the message out about adhering to the standards.

In response to Councilman Bothwell, Mr. Putnam said that he would need approximately 60 days to make sure the signs are made and installed. City Attorney suggested Council may wish to give a delayed effective date of the ordinance.

Councilman Smith and Councilman Pelly both agreed to the friendly amendment made by Councilman Bothwell to delay the effective date for 60 days.

Councilman Davis agreed with Councilman Hunt that this is a safety issue. He understands the passion of skateboarders, but regrettably he couldn't see skateboarding as transportation as much as an opportunity for recreation in a densely populated area.

The amended motion made by Councilman Smith and seconded by Councilman Pelly failed on a 3-4 vote, with Mayor Bellamy, Vice-Mayor Manheimer, Councilman Davis and Councilman Hunt voting "no."

**ORDINANCE BOOK NO. 27 – PAGE 403**

### B. CONFIRMATION OF PLANNING & ZONING COMMISSION CANDIDATE QUESTIONS

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that the Committee reviewed questions submitted by Council members and asked for confirmation of the following five questions: (1) Please take time to review the City's 2025 Plan land use plan. How strongly does your own vision align with that plan, and in what ways might it differ?; (2) Do you believe Asheville has taken an approach that is too "pro-growth" or "anti-growth" over the past 5-6 years? What do the terms "pro-growth" and "anti-growth" mean to you? Please share your reasoning; (3) How strictly should interpretation and application of the Unified Development Ordinance be applied?; (4) Name one Planning & Zoning Commission decision in the last 18 months you've agreed with and one you've disagreed with or would have struggled with. Please explain your rationale for each; and (5) What are some of the positive or negative effects of Asheville's zoning regulations.

It was the consensus of Council to accept the five questions outlined above to send to all Planning & Zoning Commission candidates.

## VI. NEW BUSINESS:

### A. RESOLUTION NO. 12-161 - RESOLUTION REALLOCATING FAIR HOUSING ASSISTANCE PROGRAM FUNDS TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL TO PERFORM FAIR HOUSING MARKETING, TRAINING AND OUTREACH

Community Development Director Jeff Staudinger said that this is the consideration of a resolution to reallocate Fair Housing Assistance Program Funds from a request by the Asheville-Buncombe Community Relations Council (ABCRC) for $15,000 in Fair Housing Assistance program funding to perform fair housing marketing, training and outreach.

For a number of years, the Asheville Buncombe Community Relations Council served as the designated Fair Housing investigatory and enforcement agency for the City of Asheville. Their services were funded, in part, through HUD's Fair Housing Assistance Program (FHAP). These funds were granted to the City of Asheville; the City then passed the funds on to ABCRC. The amount of funds allocated were based upon the number of fair housing cases closed in the prior year, as well as an administrative and travel/training allocation. Last year, the City of Asheville received these funds, but did not pass them through to ABCRC, because that agency was no longer the designated agency for fair housing for the City.

HUD was informed of this action, and told staff that the City could retain the funds but that they needed to be spent to "affirmatively further fair housing." The deadline for use of the funds is July, 2017. The amount of FHAP funds was $43,316. Of that amount, $11,000 has been expended on the Analysis of Impediments to Fair Housing. A balance of $32,316 remains.

ABCRC seeks to reinstate its position as the first agency point of contact for Asheville residents who have fair housing concerns, and to lead the community work to educate and inform Asheville residents about their fair housing rights and recourse if those rights have been violated. They seek $15,000 in FHAP funds to primarily conduct community information and education activities about fair housing, and to conduct fair housing training in Asheville. If successful, ABCRC indicates they are likely to make a similar request later this year to use FHAP for a Phase 2 element which would focus on honing their outreach plan and implementing it in the community.

Since the North Carolina Human Relations Commission was designated as the City's Fair Housing agency, it appears that fair housing complaints have been fewer in number. This could be attributed to a number of factors, including inadequate public education about fair housing.

The project directly supports the City's Strategic Operating Goal of *Affordable*: The project proposal is supportive of the City's goal for all citizens to have access to safe, sufficient and affordable housing.

Pros:

- Reestablishes a local point of contact for fair housing information for consumers.
- Fair housing training will assist private and public sector landlords comply with the law.
- ABCRC is developing a collaborative working relationship with State Human Relations Commission.

Cons:

- Agency is rebuilding, staff monitoring of the proposed activities will be important to determine whether this is the best use of limited FHAP funds.

The federal FHAP funds must be allocated to affirmatively further fair housing. The use of the funds for the proposed purpose meets that requirement. The funding will come from the FHAP budget that was approved in FY11-12. There is no impact to the General Fund.

The Housing and Community Development Committee recommends the approval of $15,000 in federal Fair Housing Assistance Program funds to ABCRC to develop and implement fair housing marketing, outreach and training, as proposed.

Ms. Staudinger responded to Vice-Mayor Manheimer's question regarding the tax issues that the ABCRC was experiencing.

Mayor Bellamy said that we are seeing an increase in people complaining about the minimum housing code not being sufficient to address their concerns with their landlords. She hoped the ABCRC will also use these funds to assist individuals in understanding their rights as well as connecting them to the resources in City government.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 12-181. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 4**

**B. MOTION TO REITERATE THE ASHEVILLE CITY COUNCIL'S POSITION THAT IT OPPOSES ANY ATTEMPT BY THE STATE LEGISLATURE TO STRIP ASHEVILLE AND ITS CITIZENS OF ITS WATER SYSTEM**

**MOTION ASKING THE GOVERNOR TO VETO HOUSE BILL 1009**

Mayor Bellamy asked that this item be placed on the agenda because she was not comfortable with the legislature stating that we had to sit down with other governments to consider consolidating our water system with Metropolitan Sewerage District (MSD). She talked to the staff in the Governor's Office to ask, as Mayor (not representing City Council) the Governor to veto the bill. She felt we can participate in the process and invite other governments to talk about this issue and we are in the process of trying to arrange a meeting with our legislators, but she felt wrong, as Mayor, not to say she doesn't like the bill and therefore wanted to ask the Governor to veto the bill. The way the bill is written is not just talking about our system. Other mayors are nervous because the bill can apply to other municipal services across the state, including other water systems. What she is asking for Council is not only for Asheville, but also

other municipalities who are fearful of their system being consolidated. If we are going to give up our water system it should be because this body of elected individuals believes it is the right thing to do. She felt the water system is worth fighting for and we should ask the Governor to veto this bill that we did not ask for.

Vice-Mayor Manheimer said that the House Bill 1009 does two things. The first part of the bill amends the current legislation that governs the MSD. At this time, MSD can take in additional systems and when it does that their board make-up changes. Now, due to the way the statute is worded, is if a portion of Henderson County were to come into MSD (MSD does treat the Cane Creek area of Henderson County), Asheville would lose two of their three seats on the MSD Board. The first part of this bill would be helpful in that it addresses that current problem by ensuring that if Henderson County were to come into MSD that Asheville would retain three seats. That is somewhat problematic for us because most of MSD customers now reside within the City of Asheville. The second part of this bill authorizes MSD to run a water system. She felt it was important for us to reiterate that we are opposed to any move by the legislature to strip us and our citizens of Asheville's water system.

Vice-Mayor Manheimer moved that the Asheville City Council reiterate its position that it opposes any attempt by the state legislature to strip Asheville and its citizens of its water system. This motion was seconded by Councilman Hunt.

Councilman Smith confirmed that the motion is also a reaffirmation of when Council reiterated this same sentiment before because we were not consulted, that we felt a lot of the facts were left out, and the overwhelming public opposition to this move.

Mayor Bellamy supported the motion but also believed we need to send a message that we don't support House Bill 1009 and ask the Governor to veto the bill. Even if the bill has some good to it, the intent is laying the foundation to take our system, and that is not okay for her. The consultants that MSD approved, when asked whether the existing ratepayers of the City's water system, if expanded to Henderson County, would see an increase, they said they would. If this system is expanded to take in Henderson County, Asheville ratepayers will see an increase. If our water system is taken from the City of Asheville, Asheville ratepayers will see an increase. It is not fair. She felt she would be doing the citizens of Asheville a disservice in not saying this is wrong. We should not be asked, forced or required to give our system to an independent authority.

In response to Councilman Smith, Mayor Bellamy said that she spoke to the City's government relations consultant, and the League of Municipalities who said that it is important that we show we don't want this. Otherwise, silence is approval. This begins the process of legislation to take our water system.

Councilman Smith said strategically as far as we are trying to figure out how we are going to see this process through and do right by the Asheville ratepayers, what weighs in his mind is whether to call on the Governor to veto a bill that received a veto-proof majority upon its first passage and is therefore very likely to be overridden again and whether that aids our cause of retaining the system or whether it might in fact further injure our cause.

Mayor Bellamy felt that some of the people who voted for it didn't under the impact of what they were voting for. She said the super majority of our delegation did not support this bill.

Councilman Davis was very supportive of reiterating our motion.

When Vice-Mayor Manheimer asked if she had a sense of whether or not the Governor would be willing to veto, Mayor Bellamy said that the Governor has already dismissed approximately 75% of the bills and she is waiting to hear officially from our community. If we vote

unanimously to request her to veto the bill, she would take that to mean that the citizens of Asheville do not support the bill.

Councilman Pelly agreed that we should ask the Governor to veto the bill. This is a public bill and if it is allowed to move forward and passes, the bill that would allow the system to be transferred to MSD could be a local bill that would not require the Governor's signature at all. He felt this is our last opportunity to send that statement to the Governor.

Mr. Barry Summers felt that if Council doesn't urge a veto of this bill, they are essentially acquiescing. He didn't think this can get worse as the study that MSD is proposing is going forward.

Rev. Christopher Chiaronmonte spoke about the poor treatment of the homeless.

Mayor Bellamy said that by reaffirming our position and/or asking for the Governor to veto the bill doesn't mean that the Governor will do ask we ask. But, as Mayor, she felt responsible to at least ask as she doesn't support the bill. While the bill may have a good portion, she felt the ultimate goal is not beneficial to the citizens of Asheville.

The motion made by Vice-Mayor Manheimer and seconded by Councilman Hunt carried unanimously.

Councilman Pelly moved to ask the Governor to veto House Bill 1009. This motion was seconded by Councilman Davis.

Councilman Bothwell reminded our citizens that we raised commercial water bills to make it more equitable for the residential users.

In response to Vice-Mayor Manheimer regarding a possible conflict of interest due to her appointment to the MSD Board, City Attorney Oast said that he realizes that she is serving in two capacities; however, she would be voting as a Council member. To the extent there is a conflict between her two responsibilities, he did not think it was a conflict to disqualify her from voting.

The motion made by Councilman Pelly and seconded by Councilman Davis carried unanimously.

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Grant Millin said that the Bloomberg Philanthropies Mayors Challenge application process is clear that citizens, businesses and nonprofits are authorized to design the application outcome strategy and participate in directing the distribution funds in a "people's Budget" formula. He urged Council to direct the City Manager to organize an open innovation process to find the pulse of the city for an Asheville Mayors Challenge response and offered his services to help with that process.

After Ms. Patricia Dockery expressed her concern about the delay in public meetings regarding the noise ordinance, City Manager Jackson said that he would be happy to provide Council and Ms. Dockery with a report on the process to make sure we have a comprehensive noise ordinance.

Rev. Christopher Chiaronmonte spoke about the homeless issue in Asheville and urged Council to provide a camp for them.

Ms. Deborah Gurriere, representative of the owners of Ardmion Park Association Condominiums, questioned Council's approval of the use of Ardmion Park Road for the Beaucatcher Mountain greenway. The Association has received information from a surveyor and

from the City that their private driveway is being considered as a vital part of the greenway allowing for public pedestrian and non-motorized vehicular use. It is the opinion of the homeowners and their legal counsel that this is an encroachment on their private properties which would result in issues of safety, privacy and personal liability. She provided the Council with a letter from their attorney to City Attorney Oast. Mayor Bellamy said that City Attorney Oast would be discussing the matter with their attorney, Mr. Albert Sneed.

Councilman Smith was pleased to announce that Homeward Bound broke their single year record for housing homeless people in Asheville. They housed 250 people this year.

At Mayor Bellamy's request, it was the consensus of Council to ask the City Manager to provide a report on the process the City is making towards homelessness.

Councilman Smith invited the public to attend the Bele Chere Festival this weekend.

It was the consensus of Council to hold a water worksession on July 31, 2012, from 3:30-5:00 p.m. in the First Floor North Conference to discuss items such as the Main Water Transmission Line project, a report on the MSD merger study, an overview of the calculations being performed by staff of the impact on the General Fund and CIP of MSD/Water merger scenarios.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 9:31 p.m.

Magdalen Bowlesson
CITY CLERK

MAYOR

Tuesday – July 31, 2012 – 3:30 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell (arrived in meeting at 4:25 p.m.); Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; Assistant City Attorney Martha McGlohon; and City Clerk Magdalen Burleson

Absent: None

**Water Resources Director Report**

Water Resources Director Steve Shoaf said that the Water Resources Department continues to manage the water production and distribution system operations while maintaining the assets of the system. The FY 2013 budget: $33,531,552 and they have 147 positions full-time positions. Their Capital Improvement project budget: $7,438,564. The water system is operated to provide a valuable resource and protect public health at a reasonable cost to consumers

Regarding affordability (1) Affordable housing tap and meter fee rebates for new construction: $74,140; (2) Water line infrastructure rebate for infill and affordable housing: $22,409; (3) Leak adjustments for higher than normal water bills related to leaks: $296,049; and (4) Water rates: No increase projected through FY 2014.

Regarding fiscal responsibility (1) Working with Finance to record existing and new fixed assets; (2) Working with Finance to close budgets for completed projects to release money for future projects; (3) Over 42,000 automated meter reading devices installed leading to better efficiency; (4) Improving asset management process to guide CIP planning; (5) CIP distribution projects intended to address system issues related to responsible operation; (6) CIP neighborhood projects address water line replacement in localized neighborhoods; (7) CIP water system master plan projects aimed at providing for current and future needs for operations and growth of the system; and (8) Internal emphasis on energy conservation and green solutions (ISO 14001).

Regarding the water transmission main evaluation (1) Primary conveyance bringing water from North Fork and Bee Tree WTPs to the City; (2) Evaluating almost 19 miles of pipe; (3) 36" steel pipe installed in early 1950's; (4) 24" cast iron pipe installed 80+ years ago; (5) Phase I complete (location, mapping, external evaluation, condition of visible features); and (6) Phase II proposed evaluation (internal and external).

North Fork Dam improvements (1) Continued evaluation of North Fork Dam; (2) Stability analysis indicates need for improvements to stabilize dam; (3) Storm event analysis indicates need for larger spillway and other improvements; (4) Repairs to existing raw water intake structures; and (5) Next phase is a geotechnical subsurface evaluation of proposed repairs/modifications.

Mayor Bellamy apologized to the Asheville Water Department employees in that this is not something City Council initiated or wants. We want them to feel secure in their future.

Mayor Bellamy noted our water system has a AA+ bond rating, the Water Department continues to maintain the certification of the ISO 140001 on energy conservation and green solutions, and most notably Mr. Shoaf was recently awarded the George Warren Fuller Award which is the highest award that can be given by a State Section of the NC American Waterworks and Water Environment Association. Her point in mentioning these outstanding accomplishments is that this legislation is not based on a badly run system. Our water system is run effectively and efficiently.

Mr. Shoaf responded to various questions/comments from Council, some being, but are not limited to: what is the technology for inspections inside the pipes; is the same system for inspecting water pipes the same as inspecting sewer pipes; confirmation that the water system is run on a "business as usual" basis while the MSD merger discussion is ongoing; addressed the leakage rate; and inventory of parts.

**Update on the Metropolitan Sewerage District Water/Sewer Consolidation Impact Study**

City Manager Jackson said that he invited Mr. Tom Hardy, Executive Director of MSD and/or their consultant, to present this update to Council; however, they declined.

Water Resources Director Steve Shoaf said that regarding the Water System – MSD Merger (1) Water System provides a significant City service; (2) Customer Service is already merged and produces a combined services statement; (3) Water Resources Department plans and implements on-going system improvements; (4) COA Water Resources collaborates with MSD regarding neighborhood projects (share capital project plans); (5) Phase I of MSD study to explore impacts to MSD rate payers if merged with COA Water; (6) Phase II of MSD study to explore impacts to MSD rate payers if merged with other systems with or without COA; (7) Timeline of MSD study - Phase I report – November 2012 and Phase II report – January 2013; and (8) Options that could be considered: (a) No merger occurs; (b) MSD absorbs the City of Asheville Water System; (c) The City of Asheville absorbs the MSD organization; (d) A new authority is formed to assume the functions of both MSD and the City's Water System; or (e) A regional solution involves all water and sewer providers in Buncombe and Henderson Counties.

In a little more detail, the Metropolitan Sewerage District of Buncombe County advertised a request for proposals (RFP) to study the impact on MSD rate payers of a consolidation/merger of the City of Asheville water system and other water systems in Buncombe County with the Metropolitan Sewerage District. MSD compiled extensive background information for use by the consultants and made this available at the following link: http://www.msdbc.org/waterstudy.php

In response to that RFP, on July 18, 2012, the MSD Board of Directors approved the selection of Malcolm Pirnie/Arcadis to perform a detailed impact study. There will be a project "kick off" meeting with MSD and the consultant on August 1, 2012. Representatives from the City have been invited.

The project as described will consist of two phases. Phase I will be an "Evaluation of the potential merger of the City of Asheville Water System with MSD". The Phase I study results will be presented to the MSD Planning Committee in early November 2012 and to the full Board on November 14, 2012.

Phase II will be an "Evaluation of the potential merger of the Weaverville, Biltmore Forest, and Montreat systems with MSD both in conjunction with, and independent of Asheville". The Phase II study results will be presented to the MSD Planning Committee and the full Board in January 2013.

The City can anticipate additional financial and operational information requests from Malcolm Pirnie/Arcadis as these studies progress. In addition the City of Hendersonville is pursuing a study of potential impacts to their water system should they become involved in a regional merger.

There are several scenarios that could be considered:

- No merger occurs
- MSD absorbs the City of Asheville Water System
- The City of Asheville absorbs the MSD organization
- A new authority is formed to assume the functions of both MSD and the City's Water System
- A regional solution involves all water and sewer providers in Buncombe and Henderson Counties

This is an information item. Any action would be at the discretion of City Council.

City Manager Jackson said that the MSD study only does modeling of one scenario. It does not evaluate what would be the best governance model of that system. It also does not look at alternative service delivery models and does not analyze compensation issues. And, it does not provide for public input or public comment.

**Overview of Staff Analysis of Merger Scenarios**

Budget Director Tony McDowell said that the purpose of this staff report is to provide City Council with an overview of a scope of work staff is completing on the financial impact of a merged water and sewer utility, as contemplated by the Legislative Research Commission's Committee on Metropolitan Sewerage/Water System and MSD's internal study.

As City Council is aware, MSD is studying the impact of absorbing the municipal water system into its existing operations. The scope of that study does not include determining the financial or operational impacts the merger would have on the City of Asheville.

The overall purposes of the City's analysis will be to:

- Evaluate the financial impacts (operating and capital) of merging the two systems versus operating them separately;
- To analyze the financial efficiencies of consolidating systems under the City of Asheville's municipal structure versus consolidating them under the Metropolitan Sewerage District;
- To quantify any future cost avoidance that could be achieved by merging the sewer and water utilities under municipal operations and independent authority operations;
- To estimate the impacts on future user charge rates of consolidating systems; and
- To confirm the most appropriate calculation of the market value of the water system.

Staff anticipates developing a preliminary plan for utility staffing and proposed merged budgets as well as forecasts for financially merged utilities under municipal operations versus MSD operations.

The scope of staff's evaluation does not include an engineering analysis of water and sanitary sewer systems assets and facility needs. The City of Asheville has conducted extensive evaluation of water system assets and the need for new water utility facilities to meet future demands through its master planning process. Staff will review any similar existing studies completed by MSD in addition to its Capital Improvement Plan. At this point, staff is assuming capital improvement needs would not be impacted under a consolidated model. However, a review of both utilities' CIP will be conducted to verify this assumption.

Staff is proposing that the analysis be phased with initial efforts focused on the financial impact to the City of Asheville from a consolidation with MSD. Staff anticipates this first phase of the analysis to conclude in 30-60 days. Staff will prepare a report of the study methodology and findings for City Council review, which is intended to facilitate and inform City Council's policy considerations and possible negotiations. The analysis will require MSD and the City of Asheville to share information about our respective utility operations, which is already occurring through the MSD study process.

This staff analysis is consistent with City Council's strategic goal of operating the City of Asheville to the highest standards of fiscal responsibility.

Staff is conducting this analysis using internal resources and staff time. Consulting services and data validation may be provided by a third-party firm, Raftelis Financial Consultants. It is anticipated that any costs incurred will be absorbed within the City's existing operating budget.

Staff recommends proceeding with the analysis as outlined above. Staff will provide any interim updates on the process to the City Council Finance Committee. A final report and findings will be provided to the full City Council.

Mayor Bellamy asked that City Council receive a mid-way interim update on the process.

In response to Councilman Hunt, City Manager Jackson said that the modeling we would do on the alternative merger (to bring MSD under the City water system) would be a modeling of how savings might be accomplished under just one alternative scenario, but there are multiple scenarios that we are not in a position to develop, unless directed by City Council. There are a range of those, including an intergovernmental agreement, a separate utility district, etc.

Mr. Doug Bean, representing Raftelis Financial Consultants, said there are a host of models that other cities across the United States use. What is really interesting is that as you look at utility operations how critical the governance piece becomes in operating a system. It needs to be modeled for a particular situation. There are a host of those governance structures and they can certainly lay those out for Council.

Councilman Hunt questioned if the study conducted by MSD does not including examination of a governance structure, is there opportunity for us to include in our study the governance piece for the MSD-led model? Mr. Bean explained there are two pieces of governance – the legal structure of the way it is put together and the governing of those different models.

Mayor Bellamy felt we need to also look at House Bill 1009 and propose legislation for Asheville not to lose any of their seats on the MSD board.

It was the consensus of Council to have Mr. Bean put together an assessment of the two pieces of governing models and how they work and in which situations they work best in.

Mayor Bellamy also suggested a review of the two studies conducted by Henderson County on the Cane Creek Sewer/Water District to see what the impact would be on the Asheville ratepayers if portions of Henderson County are merged into the system.

**Council Discussion and Policy Direction, Including Next Steps for Public and Intergovernmental Relations**

Mayor Bellamy noted that on May 18, 2012, MSD wrote the City and asked us to participate in their process. Per Council direction, City staff invited our legislatures to a joint meeting and also invited all towns/cities, Buncombe County and municipal districts in the area who would be affected by a regional system to a meeting.

Vice-Mayor Manheimer felt that our invitation to the surrounding municipalities and County is an important first step for a fruitful review of our own. We also need to know how our voters feel about this situation. The City has an opportunity under the Statute to, by referendum on the November ballot, to ask our voters whether or not they would approve of a change in our water system that might be negotiated without legislative interference. This is an excellent opportunity for us to accurately gauge the sentiment of the citizenry of Asheville with regard to this information. We will need to know that information, along with more information, in order to have a fruitful discussion with MSD in compliance with the recommendations of the Legislative Study Commission.

When Councilman Bothwell asked if the referendum would be binding, Assistant City Attorney Martha McGlohon said that the City Attorney's Office is looking at the entire referendum issue. There are time limits associated with a referendum along with actions required by City Council.

Councilman Bothwell questioned if we can also have the County, if they are willing, to include all of the precincts that are served by the water system, not just residents of the City of Asheville.

Vice-Mayor Manheimer suggested Council ask staff to look into questions raised by Council and give them specific guidance as to what we need to do to be able to put this on the November ballot, should Council choose to do so.

Regarding a response to MSD regarding participating in their process, after discussion, it was the consensus of Council send a letter to MSD, under the Mayor's signature, that we are willing to be a part of their process but we are in the information gathering stage to help us understand what the best options are for Asheville and Asheville's ratepayers and need that information before we would be able to have a really meaningful discussion with them.

Mayor Bellamy read a portion of the May 18 letter from MSD as follows "MSD Board and staff are available to meet with representatives of the City to consider the Committee's recommendations and to discuss a process going forward. If the City is interested in meeting with MSD and staff to discuss these matters, please have Gary Jackson contact Mr. Hartye to arrange a meeting." We may respond that we would like meet and do further due diligence together - not just say we are willing to meet. She noted their letter doesn't say what our part in that process would be, especially since they have already hired a consultant. We will get our ad hoc committee (Vice-Mayor Manheimer and Councilman Davis) to work with City Manager Jackson on a meeting. Because Vice-Mayor Manheimer and Councilman Pelly are both MSD Board members (seated to represent the City), it was the consensus of Council that Councilman Davis be the point person to speak on behalf of City Council so as not to put Vice-Mayor Manheimer or Councilman Pelly in a difficult position.

Regarding the invitation to our legislation for a joint meeting regarding this legislation, after discussion and due to the fact that we have not received responses from Rep. Moffitt and Senator Apodaca, it was the consensus of Council to meet on the date that Rep. Keever, Senator Nesbitt and Rep. Fisher could meet and re-extend the invitation again to Rep. Moffitt and Senator Apodaca. The meeting date would be Monday, August 27, 2012, at 1:30 p.m. in the Banquet Hall of the U.S. Cellular Center.

Regarding the public engagement part of this process, it was the consensus of Council to have on the City's website a page with all available information; a standing item at every Council meeting for an update on the water/sewer merger study; a special meeting for the mid-way interim update on the water analysis process; issuance of a press release using all available social media; an insert in the next water bill; and for Council consideration of calling for a referendum on the August 14 agenda.

City Manager Jackson said that staff hopes to have completed the conservation easement over the watershed within the next 60-90 days. Additionally, we have reached an agreement with Henderson County to extend the timeframe of when the Bent Creek land would transfer to the City.

**ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 5:02 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – August 14, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Bothwell gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF OLYMPICS SILVER MEDALIST WINNER LAUREN TAMAYO**

On behalf of City Council, Mayor Bellamy was pleased to welcome home Olympics Silver Medalist Winner Lauren Tamayo and presented her with a key to the City.

**B. RECOGNITION OF CHRISTINA MAXWELL AS DISTINGUISHED YOUNG WOMAN OF AMERICA**

On behalf of City Council, Mayor Bellamy was pleased to recognize the Distinguished Young Woman of America, local teen Christina Maxwell, and presented her with a key to the City.

**C. EMPLOYEE RECOGNITIONS**

City Manager Jackson was pleased to recognize the following employees: (1) Erik Hagan (Building Safety), Maggie Ullman Finance/ Sustainability), Deb Messer (ITS), Wanda Burgess (ITS) and Jeff Reble (ITS) for their role in the Public Technology Institute Award; (2) Greg Shuler, Streets & Engineering Manager, for receiving the Robert S. Hopson Leadership Award for the N.C. Chapter of the American Public Works Association; (3) Sam Powers, Economic Development/Civic Center Director, for receiving the 2012 Economic Developer of the Year Award; and (4) from the Excellence in Public Service Awards - Continuous Improvement – Ivan Thomas (Water/Maintenance); Integrity – Jerry Hill (Public Works/Fleet); Diversity – Douglas Zuendt (Fire); Safety and Welfare – Michelle Massey-Smith (Water); Excellent Service – Chris Maloney (Public Works/Sanitation); Outstanding Leadership – Joy Ponder (Fire); Above and Beyond – Janet Dack (Economic Development); Rising Star – Zachary McTaggart (APD/Animal Services); and Outstanding Teamwork - Asheville U.S. Cellular Center Team (Civic Center) - Karen Gillespie, Dan Dover, Benita Wynn, Anne Stafford, Marcia Hart, JC Gillespie, Jim Smith, John Ball, Richard Quick, Jeanine Crum, Norbert Irvin, Ian Moye, William Hyde, Jody Beck, Chris Scott.

On behalf of City Council, Mayor Bellamy thanked these employees for their outstanding work and looked forward to hearing other great accomplishments by our employees.

**D. PROCLAMATION PROCLAIMING AUGUST 18, 2012, AS "HONEY BEE AWARENESS DAY"**

Mayor Bellamy read the proclamation proclaiming August 18, 2012, as "Honey Bee Awareness Day" in the City of Asheville. She presented the proclamation to Ms. Phyllis Stiles who briefed City Council on some activities taking place during the day.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 24, 2012**

**B. ORDINANCE NO. 4103 - BUDGET AMENDMENT FROM THE NORTH CAROLINA ARTS COUNCIL FOR THE GRASSROOTS ARTS PROGRAM GRANT**

Summary: The consideration of a budget amendment, in the amount of $50,431, from the North Carolina Arts Council for the Grassroots Arts Program Grant.

The North Carolina Arts Council operates the Grassroots Arts Program Grant that provides per capita-based funding for arts programming to all 100 counties across North Carolina ensuring opportunities for citizens to experience the arts in their own communities. In counties without a "Designated County Partner", the North Carolina Arts Council invites an organization to serve as a "Provisional County Partner" in order to manage the distribution of grant funds.

In 2011, As the Asheville Arts Council was going through an organizational restructuring. The City of Asheville was asked by the North Carolina Arts Council to be the "Provisional County Partner" to manage the distribution of Grassroots Arts Program funds as appropriated by the North Carolina Arts Council. We expect that once the North Carolina Arts Council and the Asheville Arts Council are done with organizational restructuring that the Asheville Arts Council will once again administer the grant program as they have done in the past.

The grant funds will be awarded to eligible organizations in Asheville and Buncombe County who will then provide community art programs. Per grant guidelines, the City may retain 10% of the grant funds to support administrative cost associated with the grant program.

The action complies with the City Council Strategic Plan in that is creates more collaborative and effective working partnerships between the City of Asheville, the business community, and other key organizations to effectively manage the city's regulatory environment while accomplishing economic development goals and fiscal responsibility of exploring alternative for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities. The action also complies with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it enhances public confidence for and appreciation of the arts, and enhance facilitation and resources among arts interests.

Pro:
- Provides additional funds to support the arts in Asheville and Buncombe County

Con:
- None

The $50,431 grant from the North Carolina Arts Council Grassroots Arts Program will be received by the City and passed on to the designated sub grantees. The grant will be budgeted in the General Fund.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to establish a budget of $50,431 for a grant from the North Carolina Arts Council Grassroots Arts Program Grant.

**ORDINANCE BOOK NO. 27 – PAGE 426**

**C. RESOLUTION NO. 12-179 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH STRICKLAND WATERPROOFING CO. INC. FOR THE CLEANING AND GENERAL REPAIRS IN THE UPPER BALCONY SEATING AT THE U.S. CELLULAR CENTER**

**ORDINANCE NO. 4104 - BUDGET AMENDMENT TO FUND THE CONTRACT WITH STRICKLAND WATERPROOFING CO. INC.**

Summary: The consideration of: 1) a resolution authorizing the City Manager to enter into a contract with Strickland Waterproofing Company, Inc. in the amount of $ 117,000.00 plus a 20% contingency in the event additional services are required outside the original scope of the contract for general cleaning, stain removal and painting in the upper balcony seating area in the ExploreAsheville.com arena at the U.S. Cellular Center; and 2) a budget amendment in the amount of $140,400 to fund the contract and contingency with proceeds from Buncombe County's FY 2012-13 contribution to the Southern Conference Renovations project.

This contract incorporates an additional component of the overall renovation of the arena consistent with the overall U.S. Cellular Center renovation plans. The overall renovations were started in preparation to host the Southern Conference Basketball Tournament beginning in March 2012 and through 2015. These renovations give patrons and promoters a much improved experience when attending or scheduling concerts, sporting events and other special events throughout the years to come.

The following bids were received:

- Strickland Waterproofing Co. Inc., Charlotte, NC: $117,000.00
- Superior Painting Inc., Asheville, NC: $267,612.00

This action complies with the City Council Strategic Operating Plan's Fiscal Responsibility goal of developing strategic partnerships to leverage resources for infrastructure and CIP projects. This action also complies with the U.S. Cellular Center Commission Master Plan that encourages continuing renovations for the facility, and supports the goal of developing new partnerships. It has been reviewed and recommended by the Civic Center Commission.

Pros:

- Project provides for a much better experience for the patrons.
- Much needed attention that will prolong the life of possibly the most used seating section of the arena.
- Project bid is below budget.

Con:

- None.

As noted above, the amount of the contract and the 20% contingency is $140,400. The City received funding from Buncombe County in July in the amount of $340,000 for FY 2012-13 capital expenses associated with the Southern Conference Renovations project. A portion of this funding will be used for the Strickland Waterproofing contract and contingency budget.

City staff recommends City Council adopt 1) a resolution authorizing the City Manager to enter into a contract with Strickland Waterproofing Co. Inc., in the amount of $117,000.00 plus

20% contingency, for a total of $ 140,400.00, for the General Services of cleaning and refurbishing the upper seating balcony of the ExploreAsheville.com arena at the U.S. Cellular Center; and 2) a budget amendment in the amount of $140,400 to fund the contract and contingency with proceeds from Buncombe County's FY 2012-13 contribution to the Southern Conference Renovations project.

**RESOLUTION BOOK NO. 35 – PAGE 40**
**ORDINANCE BOOK NO. 27 – PAGE 428**

**D. ORDINANCE NO. 4105 - ORDINANCE AMENDING THE FEES AND CHARGES MANUAL FOR A CREDIT CARD FEE CONVENIENCE FEE FOR PARKING**

Summary: The consideration of a proposal for Parking Division staff to test a pay-by-phone with validation system for on-street metered parking to enable customers to use credit or debit cards and an ordinance amending the Fees and Charges Manual for the addition of a convenience fee.

Parking Division staff constantly looks for ways to improve the overall parking experience in downtown Asheville for all of its customers. We are currently looking at options to enable customers to use credit or debit cards in addition to cash at the parking meters. One option that we would like to test for 90 days during the months of September, October, and November is a pay-by-phone with validation system. The system provides three convenient payment options including phone, text message, and mobile "app". The existing parking meters continue to function just like they do now and customers can continue to add coins. The only things added to the parking meters are stickers and/or signs giving instructions on how to use the pay-by-phone system. There is no initial capital outlay for the test. The vendor charges a $0.25 per transaction fee (invoiced at the end of each month) and staff would like to pass that cost onto the customer as a convenience fee. The convenience fee would essentially keep all customers on the same "playing field" as to the current $1.00 per hour parking meter fee. The current maximum time of two hours would not change.

Currently, there are about 740 metered on-street parking spaces in the Central Business District and for collection purposes, we have seven geographical zones. The test would be in Zone 6 which includes Haywood Street, Battery Park Avenue, Wall Street, and Hiawassee Street. Zone 6 has about 104 on-street metered parking spaces and averages about $14,000 per month in revenue.

In addition to the pay-by-phone with validation system, we are working with our existing parking meter vendor to provide actual credit/debit card capability at each individual parking meter. We are a confirmed "test" city and we anticipate receiving the appropriate equipment in the next several months to install on 10 to 15 parking meters.

This action complies with the City Council's Strategic Operating Plan in the Fiscal Responsibility Area with the goal to operate the City of Asheville to the highest levels of fiscal responsibility.

This item was reviewed by the Council's Finance Committee on July 24, 2012, and has received the Committee's endorsement.

Pros:

- Enables customers to use credit or debit cards in addition to cash.
- Provides three convenient payment options to the customers.
- Provides validation enabling businesses an opportunity to validate a customer's parking experience.
- Requires no changes to the existing parking meters.

Con:

- $0.25 per transaction convenience fee.

The total anticipated cost of the "test" is about $4,200 assuming a 40% credit/debit card transaction rate. That amount is currently budgeted in the FY 2012-13 Parking Enterprise Fund Operating Budget but it would be recovered by the convenience fee.

Staff recommends that City Council approve a pay-by-phone with validation system for the on-street metered parking in Zone 6 for a period of 90 days to enable customers to use credit or debit cards and an ordinance amending the current Fees and Charges Manual for the addition of a convenience fee.

In response to Mayor Bellamy, Director of Transportation Ken Putnam explained in detail that this is a test project and how it will work. The individual will get a text message warning when they have 15 minutes left on the two-hour limit. The City has the technology in hand regarding enforcement. He said that before the end of the year he would provide Council with an update. He said they are always looking for ways to improve the customer service downtown.

**ORDINANCE BOOK NO. 27 – PAGE 430**

**E. RESOLUTION NO. 12-180 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER WITH SCHNABEL ENGINEERING FOR SUBSURFACE INVESTIGATIONS OF THE NORTH FORK DAM SITE**

Summary: The consideration of a resolution authorizing the City Manager to execute a change order in the amount of $78,930.00 with Schnabel Engineering for Subsurface Investigations of the North Fork Dam Site for a total contract cost of $268,230.00.

On October 25, 2011, City Council authorized Water Resources to enter into a professional services contract with Schnabel Engineering for the North Fork Water Treatment Plant Dam / Tunnel Evaluation project. Schnabel's current contract consists of: (1) evaluating alternatives to address the spillway capacity, (2) a structural evaluation of the outlet works conduit, (3) evaluating the North Fork Dam spillway gates by performing gate inspections and a structural analysis of the gates, and (4) conducting EAP training for plant staff.

During the initial evaluation, Schnabel Engineering discovered unexpected conditions regarding the stability of the dam that need to be addressed before continuing with the evaluation. To complete the initial scope of services, Schnabel needs to conduct further subsurface investigations of the North Fork dam, and potential alternate spillway. Prior to developing preliminary designs and cost estimates for the spillway alternatives, additional geotechnical and geophysical investigations need to be performed to determine the cost and design implications of the subsurface conditions. The scope of the change order consists of: (1) Task 1 – Geotechnical Investigations at a cost of $53,830; (2) Task 2 – Geophysical Investigation at a cost of $18,000; and (3) Task 3 – Geotechnical Data Report at a cost of $7,100.

This project is part of City Council's strategic plan to improve city infrastructure and to operate at the highest levels of fiscal responsibility.

Pro:

- This change order will allow Schnabel to complete a thorough investigation of the North Fork dam site in order to ensure its stability.

Con:

- None.

The funding needed for the change order is currently allocated within the project in the Water Resources Capital Improvement Projects fund.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute a change order in the amount of $78,930.00 with Schnabel Engineering for Subsurface Investigations of the North Fork Dam Site for a total contract cost of $268,230.00.

**RESOLUTION BOOK NO. 35 – PAGE 41**

**F. RESOLUTION NO. 12-181 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A DONATION OF REAL PROPERTY FOR THE WILD CHERRY ROAD BRIDGE PROJECT**

Summary: The consideration of a resolution authorizing the Mayor to accept donation and conveyance of real property on Wild Cherry Road.

Additional property is needed to construct the proposed replacement bridge at Wild Cherry Road. The following property owners agreed to donate portions of their property in fee simple to the City of Asheville:

Gated Communities of Asheville, LLC. - New Right of Way #1: (.083 Acres +/-);
PIN # 9740769648

Gated Communities of Asheville, LLC. - New Right of Way #2: (.01 Acres +/-);
PIN # 9740770484

Anna Lee Hill - New Right of Way #3: (.004 Acres +/-);
PIN # 9740873310

This action will help to comply with the City Council Strategic Operating Plan of Fiscal Responsibility and Multimodal Transportation in that it will be providing infrastructure maintenance and increasing the output of new sidewalks.

Pros:

- The acquisition will allow Public Works to pursue the construction of the proposed bridge and update a failing infrastructure item.
- Will be a step forward in meeting the City's Strategic Operating Plan and CIP goals.

Con:

- None

Since the parcels will be donated to the City, there is no additional fiscal impact to the City of Asheville.

Staff recommends that Asheville City Council adopt a resolution authorizing the Mayor to accept the donation and conveyance of real property on Wild Cherry Road.

**RESOLUTION BOOK NO. 35 – PAGE 42**

**G. RESOLUTION NO. 12-182 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY A SANITARY SEWER EASEMENT AT MURPHY OAKLEY PARK TO THE METROPOLITAN SEWERAGE DISTRICT FOR THE LIBERTY STREET SEWER REHABILITATION PROJECT**

Summary: The consideration of a resolution authorizing the Mayor to convey a sanitary sewer easement at the Murphy Oakley Park, identified as PIN # 965758112100000, to the Metropolitan Sewerage District for the Liberty Street Sewer Rehabilitation Project.

In 2010, the City of Asheville conveyed a series of sewer easements to the Metropolitan Sewerage District (MSD) at Murphy Oakley Park as part of the Liberty Street Sewer Rehabilitation Project. The project encompassed the replacement of several existing 6 and 8 inch clay lines in the park that were in poor condition. During construction, MSD discovered an additional line at the Murphy Oakley Park that required replacement. At this time, MSD is requesting a sewer easement for the additional line segment as described on the enclosed map. This easement measures approximately 2,141 square feet and is located at the southeast corner of the park.

This action supports the City of Asheville Parks, Recreation, Cultural Arts & Greenways Master Plan by addressing critical infrastructure needs of existing parks and facilities to meet community standards.

Pros

- Improved sanitary sewer service for the community
- Minimal impact to the park property
- Proposed line replaces the existing, poor line

Cons

- Easement is being dedicated

No monetary consideration involved in this conveyance.

City staff recommends City Council to adopt the resolution authorizing the conveyance a sanitary sewer easement at the Murphy Oakley Park to the Metropolitan Sewerage District for the Liberty Street Sewer Rehabilitation Project.

**RESOLUTION BOOK NO. 35 – PAGE 43**

**H. ORDINANCE NO. 4106 - BUDGET AMENDMENT TO ENABLE THE SUB-GRANT TO THE ASHEVILLE HOUSING AUTHORITY OF A HUD EDI GRANT FOR THE REID CENTER**

Summary: The consideration of a budget amendment, in the amount of $137,200, to enable the sub-grant to the Asheville Housing Authority of a HUD EDI grant for the Reid Center.

In January 2011 Council Resolution 11-14 conditionally committed the Funds received from the EDI Special Projects Grant B-080SP-NC-0501 to the Housing Authority of the City of Asheville for renovation of the Reid Center dependent on final approval on the use of these funds by HUD.

HUD has agreed to allow the City of Asheville to sub-grant EDI Special Project funds to the Housing Authority for the renovation of the Reid Center. This budget amendment will allow the City of Asheville to fulfill its obligation and commitment to help preserve and renovate the Reid Center as a community education and training center.

This budget amendment supports the Council Strategic Goals of: (1) Safe, by supporting recreational and employment opportunities for youth at risk of gang exposure; and (2) Job Growth and Community Development, by supporting sustainable community investments in the East of the Riverway area.

Pro:

- Enables the use of EDI Special Project Grant funds for the renovation of the Reid Center

Con:

- None

When the City determined that the ongoing use of the Reid Center as a community recreation center was not feasible, the original purpose of this HUD grant would not have been able to be met, and the funds would have been returned to HUD. By supporting the Housing Authority's repurposing of the property, and committing these funds to that purpose, an additional $3.9 million of HUD funding was obtained. No general funds are required for the project, and the City has been able to sell the Center to the Housing Authority.

City staff recommends the City Council adopt the budget amendment in the amount $137,200 from HUD-federal grant funds, necessary for the City Manager to execute a subgrant agreement with the Housing Authority of the City of Asheville in the amount of $137,200.

Mayor Bellamy was pleased that the City will be a partner in the initiative with the Housing Authority for a sustainability job training center in the WC Reid Center.

**ORDINANCE BOOK NO. 27 – PAGE 432**

**I. RESOLUTION NO. 12-183 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER WITH BROWN AND CALDWELL FOR PHASE II OF THE MAIN WATER TRANSMISSION LINE EVALUATION PROJECT**

**ORDINANCE NO. 4107 - BUDGET AMENDMENT FOR THE MAIN WATER TRANSMISSION LINE EVALUATION PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a contract in the amount of $2,379,432.00 with Brown and Caldwell for Phase II of the Main Water Transmission Line Evaluation Project for a total evaluation cost of $2,698,450.00 (includes Phase I and II); and a budget amendment in the amount of $2,021,932.00 from savings in other capital projects that were completed under budget.

In August of 2011, the City of Asheville Water Resources Department solicited the services of a qualified engineering firm to work with staff to develop an assessment of some of the City's main water transmission lines (about 19 miles) with an overall goal to develop long term planning solutions for the replacement of its most critical water infrastructure. It was determined that the project needed to be divided into two phases due to budgetary constraints and to better accommodate the task sequence for the evaluation process. In January 2012, City Council approved Resolution No. 12-20 to allow the City Manager to enter into a contract with Brown and Caldwell for engineering services required to complete Phase I of the Main Water Transmission Line Evaluation Project for the contract amount of $319,018.00. Phase I of the project included: data gathering, meetings and a workshop, surveying, baseline mapping, right-of-way (easement) research, line walk and visual inspections, Level 1 External Corrosion analysis, Sub Utility Exploration (SUE), GIS updating, reporting, and planning for Phase II of the project. Phase I of the two-phase project has been completed. The entire project was taken out for bid at the same time, and Brown and Caldwell was awarded the full scope. Water Resources split the project into Phase I and II in order to allow time for more funding to become available.

The overall objective of this project is to promote the reliability of the transmission of finished water from the North Fork Water Treatment Plant to Haw Creek Junction where it is distributed to the overall water system. The main transmission lines are the 24-inch cast iron water main between Bee Tree and Haw Creek Junctions and the 36-inch steel water main that

begins at the North Fork Water Treatment Plant, interconnects with the 24-inch water main at Bee Tree Junction and continues to Haw Creek Junction. The Prestressed Concrete Cylinder Pipe (PCCP) water main is located at the North Fork WTP and connects the filters to the clear well and the transmission mains. After the break on the 36-inch water line on February 14, 2011, Water Resources staff discussed the need to perform a detailed analysis of the transmission lines in order to prevent a major break in the future.

The main reason why this project has such a drastic cost increase is because the engineer has to hire consultants who specialize in tapping into large size water pipe (24-inch and larger) under high pressures (200 psi or greater) and inserting cameras into the lines to take images of the pipe interior. This process can be dangerous, time consuming, and result in water outages if implemented incorrectly. The consultant that will be hired to do this work is the only consultant in the United States capable of performing this particular work. The amount for this specialized task is approximately $1.2 million.

This contract represents Phase II of the two-phase project. The successful completion of this second phase will result in the completion of an internal corrosion investigation using a compact camera that records a visual of the inside of the pipes, accurate leak detection, GPS location of the buried line and important features (valves, external connections), and an external pipe inspection using specialized equipment that provides remaining pipe wall thicknesses at key locations along the pipe lines. These two investigations will allow the completion of the overall condition assessment from which alternatives analysis, preliminary design, cost estimating and financial planning and implementation of a data warehousing system for this and future condition assessment projects can be derived if deemed necessary.

Phase II of the project includes analysis of the following assets:

1. 67,500 Linear Feet (LF) of 36-inch diameter steel pipe water transmission main;
2. 31,400 LF of 24-inch diameter cast iron pipe (CIP) water transmission main; and
3. 700 LF of 36-inch diameter precast concrete cylinder pipe (PCCP) finished water main at the North Fork WTP.

Pros:

- Brown and Caldwell successfully completed Phase I of the evaluation project and in the past, have provided Engineering Services on numerous water system projects for the City of Asheville. Their experience and knowledge of our water system will continue to minimize staff support and input during the process.
- This project will provide the City of Asheville with the remaining information and tools necessary to ultimately make sound decisions for planning and replacement of its most critical water infrastructure.

Con:

- Failure to award an engineering services contract would prevent the Water Resources Department from completing the necessary planning and replacement of critical water infrastructure in a timely manner.

The Water Resources Department currently has $676,518.00 budgeted for this project. The remaining funds of $2,021,932.00 needed for this contract will be transferred from the General Projects capital project that accumulates remaining funds from all of Water Resources completed, inactive capital projects. In order to use the funds in General Projects, a budget amendment is necessary.

| | |
|---|---|
| Current Amount in Main Transmission Line Eval. Proj. | $ 676,518.00 |
| Budget Amendment Amount Needed | $2,021,932.00 |
| Total Amount | $2,698,450.00 |

The amount remaining in General Projects will be reallocated to other capital projects as the need arises. Staff will seek Council approval on any future reallocation of these funds

City staff recommends City Council approval of the resolution authorizing the City Manager to execute a contract in the amount of $2,379,432.00 with Brown and Caldwell for Phase II of the Main Water Transmission Line Evaluation Project for a total evaluation cost of $2,698,450.00 (includes Phase I and II); and a budget amendment in the amount of $2,021,932.00 from savings in other capital projects that were completed under budget.

**RESOLUTION BOOK NO. 35 – PAGE 44**
**ORDINANCE BOOK NO. 27 – PAGE434**

**J. RESOLUTION NO. 12-184 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A COOPERATIVE PURCHASING/INTERLOCAL AGREEMENT WITH HOUSTON-GALVESTON AREA COUNCIL TO UTILIZE THEIR COOPERATIVE PURCHASING PROGRAM**

Summary: The consideration of a resolution authorizing the Mayor to enter into a Cooperative Purchasing/Interlocal Agreement with Houston-Galveston Area Council (H-GAC) to utilize their Cooperative Purchasing Program.

Cooperative Purchasing programs are formally organized programs that offer goods and services to at least two or more public agencies that have been competitively bid at discount prices. These programs allow local governments the opportunity to purchase at a much better price due to volume than if bid individually and offer highly technical equipment and heavy machinery which require strong product expertise to develop specifications and bids.

The Houston-Galveston Area Council (H-GAC) is a cooperative purchasing program that is an organized unit of local government assisting other local governments to make the governmental procurement process more efficient by establishing competitively priced contracts for goods and services, and providing the customer service necessary to help its members achieve their procurement goals. All contracts available to members of H-GAC have been awarded by virtue of a public competitive procurement process compliant with state statutes. Since this is also a unit of government, H-GAC requires an interlocal agreement to be signed in order to use this cooperative purchasing agreement.

This action complies with the City Council Strategic Operating Plan goal of "Operate the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- Opportunity to Leverage Purchase Power due to Volume
- Availability of Respected/Proven products
- Benefit of Strong Technical Specifications
- Immediate Purchase for Quick Response Time

Con:

- None

This program may yield future cost savings on purchases.

City staff recommends City Council adopt a resolution authorizing the Mayor to enter into a Cooperative Purchasing/Interlocal Agreement with Houston-Galveston Area Council.

**RESOLUTION BOOK NO. 35 – PAGE 45**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Hunt moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Smith and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. HAYWOOD STREET PROPERTIES UPDATE

Mayor Bellamy noted that this is a staff update only. At the August 28, 2012, meeting there will be a resolution setting a public hearing on this issue for September 11, 2012.

Economic Development/Civic Center Director Sam Powers said that this presentation in response to Mayor Bellamy's request for a timeline of events for the City-owned Haywood Street property.

In an effort to provide current Council members relevant history on the evolution of this process, he briefly outlined the following key actions and updates relating to the City-owned, Haywood Street property.

**September 20, 2005 City Council Meeting**
Planning and Development Director Scott Shuford shared a map of downtown, City-owned properties with City Council. City Council discussed the scarcity of affordable housing for people in the service sector and asked staff to conduct a review of City-owned properties to determine if some of our land may represent good opportunities for community redevelopment, especially redevelopment that significantly adds to our base of workforce housing.

The City Manager asked for the opportunity to do some further examination and bring back some candidate evaluations and identify properties with the greatest potential.

**January 17, 2006 City Council Meeting**
Planning and Development Director Shuford summarized City-owned properties, the development potential for each and the selection criteria for reuse or redevelopment. City Council agreed to allow for staff to refine the report for specific Council action, with the following comments made:

- Work cooperatively with Buncombe County on a possible joint partnership
- Consider ways to reach the nearby property owners of City-owned parcels
- Consider affordable housing components in the process

**November 21, 2006 City Council Meeting**
Staff requested policy guidance prior to crafting the Request for Qualifications (RFQ) for redevelopment of City-owned properties. Council's feedback consisted of the following:

- Eliminate parking garages from the RFQ process.
- Bring the Civic Center issue back for further discussion.
- Include the Coxe Avenue transit station and Hunt Hill building in the RFQ process.
- Regarding the Charlotte Street property, craft the RFQ to say that we have very valuable buildings and facilities that we want to retain but that that we are willing to entertain opportunities that are place-making in nature.

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**January 9, 2007 City Council Meeting**
City Council approves a resolution to enter into an agreement with Real Estate Research Consultants for the project management and marketing of an RFQ for the redevelopment of City-owned property.

**February 13, 2007 Planning and Economic Development Committee Meeting**
The Committee received a report on the legal review of the contract for project management assistance for the RFQ process.

**February 27, 2007 City Council Meeting**
City Council approves a resolution to enter into an agreement with Real Estate Research Consultants, Inc. for project management on the City Owned Property RFQ.

**April 11, 2007 Planning and Economic Development Committee Meeting**
Sam Powers updated the committee that the consultants would be presenting information to City Council during the May 2007 meeting.

**May 22, 2007 City Council Meeting**
Resolution approved to release an RFQ for the development of City-owned properties, including the Haywood Street properties, the Eagle Market Street properties, Office of Economic Development properties and Park Maintenance properties.

**July 11, 2007 Planning and Economic Development Committee Meeting**
Sam Powers presented a status report on City Property RFQ's; Phase II RFQ for Haywood Street/Page properties presented. The RFQ was sent to 500 firms; the report included a milestone timeline.

**August 21, 2007 City Council Meeting**
Resolution authorizing an agreement with Real Estate Research Consultants for the Request for Proposals (RFP) phase of project management for the development of a short list of firms who responded to the request for proposals.

**August 24, 2007 Downtown Commission**
Sam Powers provided a status report on the RFQ/RFP process.

**October 16, 2007 City Council Meeting**
City Council approved a short list of pre-qualified developers to be invited to submit a proposal.

**February 19, 2008 City Council Meeting**
City Council approved a resolution to amend the agreement with Real Estate research Consultants for an expanded scope of services. This allowed the project manager to assist in detailed negotiations with the firms submitting proposals.

**April 22, 2008 City Council Meeting**
City Council directed staff to enter into negotiations with the McKibbon Hotel Group to draft a development agreement for City Council review and approval.

**May 14, 2008 Planning and Economic Development Committee Meeting**
Sam Powers presented a report on the City Owned Property RFP. Council authorized staff to begin looking at components that would be included in a draft development agreement regarding the Haywood Street/Civic Center site.

**June 11, 2008 Planning and Economic Development Committee Meeting**
Sam Powers gave an update on the City Owned Property RFP; April 22, 2008 Council approved moving forward with negotiations on a draft development agreement. Staff stated that they would present draft agreement to Council in August 2008.

It was also reported that a meeting between the Basilica and McKibbon representatives occurred to discuss the letter written by the Mayor requesting a partnership to include both properties in the development of a new public space. McKibbon stated that it is committed to a "gateway" project.

**July 9, 2008 Planning and Economic Development Committee Meeting**
Sam Powers presented the update on the City Owned Property RFP; the process was on schedule. At that time McKibbon was not looking to include public parking, but was still investigating public/private partnership on the public space.

**August 20, 2008 Planning and Economic Development Committee Meeting**
Sam Powers presented an update on the City Owned Property RFP; the City received a revised letter of intent from the McKibbon Hotel Group on September 12, 2008. A meeting with Basilica representatives, the City and the developer was to take place to discuss possible public space on the triangle of land at Page Avenue and Haywood Street

**November 19, 2008 Planning and Economic Development Committee Meeting**
Sam Powers presented update on RFP for the Haywood Street Property; the McKibbon proposal included a Westin Element hotel. The City was finishing a due diligence on the offer and on the covenants and conditions of the sale to ensure development was to occur in the manner that the City envisioned.

**January 21, 2009 Planning and Economic Development Committee Meeting**
Sam Powers presented update on RFP for the Haywood Street Property; staff was negotiating agreement with McKibbon Hotel Group. A letter was sent to Bud Hansbury reinforcing Council's invitation to partner with the Basilica to develop the public space owned by the Basilica

**March 11, 2009 Planning and Economic Development Committee Meeting**
Sam Powers presented the update on the RFP for the Haywood Street Property. The city attorney was in the process of drafting a development agreement for review by the McKibbon Hotel Group; staff conducted outreach to stakeholders in the area to update them on the project. The City continued to entertain partnership opportunities on developing the public space on Basilica property. Once the draft development agreement was reviewed by McKibbon, staff would meet with Council in small groups to update them.

**April 8, 2009 Planning and Economic Development Committee Meeting**
Sam Powers presented the update on the RFP for the Haywood Street Property. City was still in the process of working on the development agreement with the intent of presenting it to the McKibbon Group once it was completed. Multiple meetings were held with McKibbon and the Basilica at the invitation of the City to partner on the development of public space on land owned by the Basilica. The City was in the process of updating the appraisal.

A motion was made that the Haywood Street Property issue be moved to Council in the form of a development agreement; the motion was passed unanimously.

**May 13, 2009 Planning and Economic Development Committee Meeting**
Sam Powers presented the update on the RFP for the Haywood Street Property. The City was preparing a draft purchase and sale agreement, and was following up with McKibbon Hotels representative Wes Townsend.

**June 10, 2009 Planning and Economic Development Committee Meeting**
Sam Powers provided a summary of correspondence with the Basilica to help clarify discussions on the public space.

**July 15, 2009 Planning and Economic Development Committee Meeting**
Stephanie Monson provided an update on the site modeling in conjunction with RENCI

**August 12, 2009 Planning and Economic Development Committee Meeting**
Stephanie Monson provided another update on the site modeling project in conjunction with RENCI.

**September 9. 2009 Planning and Economic Development Committee Meeting**
Sam Powers gave a report on the modeling project in conjunction with RENCI.

**November 11, 2009 Planning and Economic Development Committee Meeting**
Stephanie Monson presented site models developed by RENCI. The Committee directed staff to continue working under the intent of Council's initial request and discontinue the modeling system for this purpose.

**April 19, 2011 Planning and Economic Development Committee Meeting**
Bob Oast provided a summary of progress relating to the McKibbon Hotel Group negotiations. The Committee directed Mr. Oast to move forward with McKibbon Hotel Group on a formal track.

**June 21, 2011 Planning and Economic Development Committee Meeting**
Bob Oast gave an update on negotiations with the McKibbon Hotel Group, who had asked for an additional 20 – 60 days to look at their previous offer. Mr. Oast planned to work on the development agreement during that time. Additionally, he stated that much of the design of the structure had been defined with the adoption of the Downtown Master Plan.

**January 10, 2012 City Council Meeting**
City Council heard a presentation on a December 2011 proposal made on behalf of The Office of the Bishop of the Roman Catholic Diocese of Charlotte for the purchase of the City-owned, Haywood Street properties.

**January 17, 2012 Planning and Economic Development Committee Meeting**
At the direction of Council, the Planning and Economic Development Committee considered the proposal made on behalf of The Office of the Bishop of the Roman Catholic Diocese of Charlotte. At that meeting, committee members reaffirmed Council's commitment to the Request for Proposals process approved by Council and managed by city staff in 2007/2008.

**January 30, 2012 Letter**
The City of Asheville responded to the proposal from the Basilica of St. Lawrence.

**February 21, 2012 Planning and Economic Development Committee Meeting**
The Committee received an update on the drafting of the purchase agreement and shared staff's intent to receive the formal committee direction at their March meeting.

**March 20, 2012 Planning and Economic Development Committee Meeting**
The Committee received an update on from (i) City Attorney Bob Oast on the purchase contract for the McKibbon Hotel Group (MHG), and (ii) received a presentation from MHG on the elements, terms and the plan in which they wish to proceed, which would be incorporated into the development agreement. The Committee directed the item to go the full City Council. The following next steps were also discussed:

- The project would not be considered by full Council for at least a month;
- Talk to the Asheville Design Center regarding their expectations;
- Seek consultation from development attorneys on how to structure the additional processes Planning and Economic Development Committee suggested;
- Reach out to representatives of the Basilica and other neighbors to advise them that there would be an opportunity for additional input from them in this process as it moved forward in addition to just the ordinance requirements that Council puts on any property;

- Have additional consultation/conversations with the MHG on how the terms could be further analyzed to include greater clarity.

**May 10, 2012 City Staff Participation in Collaborative Design meeting**
City staff attended a meeting with representatives from the Asheville Design Center (ADC), the Basilica, and McKibbon at the offices of McGuire, Wood, and Bissette.

**May 15, 2012 Planning and Economic Development Committee Meeting**
The Committee received a brief update that City Attorney Bob Oast is reviewing the role for the Asheville Design Center on the project.

**May 31, 2012 City Staff Participation in Collaborative Design meeting**
City staff attended a meeting with representatives from the ADC, the Basilica, and McKibbon at City Hall.

**June 14, 2012 City Staff Participation in Collaborative Design meeting**
City staff attended a meeting with representatives from the ADC, the Basilica, and McKibbon at City Hall.

**July 5, 2012 McGuire, Wood & Bissette letter**
The City of Asheville received a letter from Attorney Louis Bissette representing the Basilica, outlining the following points:

- The Basilica had concluded the only way for it to protect itself and meet its interest is to have control on the city owned Haywood Street property.
- The Basilica was pulling out of the collaborative design discussions.
- The Basilica requested the Mayor put this development issue on the city council's agenda for determination.

**July 31, 2012 City Staff Participation in Collaborative Design meeting**
City staff attended a meeting with representatives from the ADC at the Civic Center.

**August 1, 2012 City Staff Participation in Collaborative Design meeting**
City staff attended a meeting with representatives from the ADC and McKibbon at City Hall.

A supplement memorandum was provided by the City Attorney outlining the state statutory process for completing a public real estate sale by a request for proposal process.

The following is the fiscal note: The purpose of this fiscal note is to provide City Council with financial considerations associated with the properties located at Haywood Street and Page Avenue. As City Council evaluates offers to purchase the property, staff recommends Council consider from a financial perspective:

- The City's financial history with the site, including its investment in the purchase of the land and previous project costs that have already been incurred and cannot be recovered (Section A);
- The most recent property appraisal, and (Section B);
- The property tax return on possible redevelopment scenarios (Section C);

**(A) Financial History**

In FY 2000, a budget was adopted for the "Battery Park parking project," a parking project contemplated at the property located ay Haywood Street and Page Avenue. While the project was active, the following revenues and expenses were recorded to the project:

Revenues:

| | |
|---|---|
| Parking Transfer | $341,000 |
| Rent | $44,000 |

Expenses:

| | |
|---|---|
| Land | $2.7 million |
| Professional Services | $1.3 million |
| Utilities, Legal, Other | $62,000 |

Project Balance: ($3.66 million)

The land associated with this project was purchased by the Parking Fund, and it is recorded as a fixed asset in that fund. If the land is sold, the proceeds from the sale would be returned to the Parking Fund. The negative project balance shown above has already been netted out of current Parking Fund fund balance projections, and so proceeds from the sale would add to the fund's reserves.

The original parking project considered at this site was not completed, and the project was deferred. Later, in 2006, City Council directed staff to include the site in the RFQ process for redevelopment proposals.

The original project has been inactive since 2006. Staff will close the project this fiscal year.

**(B) Property Appraisal**

Based on an appraisal completed on February 22, 2012, the market value of the assembled properties (three parcels and an alley) was $2,526,000.

**(C) Property Tax Projections**

Based on real estate comparables for a full service hotel with 100-125 rooms, an average annual property tax payment of $61,000 could be expected by the City of Asheville. The City of Asheville owns the properties at 68 Haywood, 76 Haywood, and 33 Page, thus there is no property tax revenue currently generated from those properties.

In response to Councilman Hunt, City Attorney Oast said the statute pursuant to which we have been proceeding is an economic development statute which allows us to convey property pursuant to private negotiation and sale, which is what we are doing in this case. That can only be done after a public hearing. At that public hearing, Council will receive information related to such things as the number of jobs that will be created, the tax value that will be added to the property, and other kinds of economic development information to ensure that the purpose of the economic development statute are being met by the proposed development. The statute specifically authorizes Council to impose conditions on the transfer to ensure that the public interest will be met. The public hearing on September 11 will be to authorize a contract which will be available for review before that time. There may be some things Council will want to add to the contract at that time and we would finalize it subject to Council's comments. Based upon what we know about the project now, it is a Level II project, which means that it would undergo design review at the Downtown Commission level and that any permits/approvals issued pursuant to the process would be incorporated into the development agreement.

Councilman Bothwell noted that the Planning & Economic Development (PED) Committee did not endorse this plan – they advanced it to Council. When it was discussed in January, he felt we should terminate this plan, because the agreement that was signed in 2008 stipulated that the project would be substantially complete within 2-3 years and Council never

voted to extend that agreement. That is the reason why he objects to continuing the project because the agreement has expired. When he voted in June to advance it to Council was because it was not going to be resolved in the PED Committee.

In response to Councilman Bothwell, City Attorney Oast said that there has been no signed contract to date but in the contract it will be specified that the project has to be complete within a certain amount of time, and that time will likely be 3 years or less.

Councilman Bothwell briefly offered another timeline about the history of some other projects in the City. The City bought the land with the intent to build a parking garage, but the citizens reacted very badly to that idea. In 2005 over 3,000 people signed a petition saying they wanted a public park or a public space at that location. Over 1,000 people signed onto a Citizen-Times one-page ad at the same time asking for the same thing. An organization he is involved with (People Advocating Real Conservancy) hired a polling company to do a phone poll of people who voted for this Council and of those people polled 78% did not want a hotel on this property. These indicate the will of the people.

Councilman Hunt felt we needed to move forward to the public hearing to see what kind of project that might yield and decide how to proceed at that point. Not that he is in favor of any of the following, but the property has several options including, but not limited to (1) surface parking; (2) creation of a public park; (3) a mixed use development that includes a pocket park/plaza; or (4) end the RFP process and begin negotiations with representatives of the Basilica.

In response to Councilman Smith, Director of Finance and Management Services said that the Parking Fund actually purchased the property. Proceeds from the land sale would be returned to the parking fund. However, it would add to the Fund Balance in that Fund and Council could choose to direct that money toward capital needs for parking or for other priorities as determined by the Council. City Manager Jackson also noted that in 2005 the minutes reflect that some benefit of this land development process should be to bring in more resources for affordable and workforce housing.

Councilman Smith was surprised to see one intent of the RFP was to establish more affordable and workforce housing. Creating affordable housing downtown is extraordinary difficult and he did not support creating affordable housing at this site. However, he would be interested in seeing how a developer might work with Council on how to achieve its strategic goals, which might be an allocation from the proceeds of the land sale into the Affordable Housing Trust Fund. He noted that the City has already spent $68,000 on the RFP process. Noting ways the Asheville Design Center has helped the process along, he hoped we can retain them through the rest of this process.

Councilman Davis recalled that Council was trying to find ways to make it affordable to live in the City by possibly converting land just sitting there. This property was added to that grouping and was not thought of from that standpoint. Regarding the poll, he appreciated the effort of PARC, but felt the poll was biased.

Mayor Bellamy said that at the public hearing there will be the opportunity for the public to address Council first-hand. She reiterated that on August 28, City Council will place on their consent agenda a resolution setting the public hearing for September 11, 2012. On September 11, Council will hear all comments and decide whether to move forward or start over.

**B. WATER RESOURCES UPDATE**

Water Resources Director Steve Shoaf briefly updated Council on the Water Resources events as follows:

At the July 31, 2012, City Council worksession (1) Overview of COA Water Resources; (2) Overview of MSD Impact Study; (3) Raftelis to review of governance models; and (4) Discussed options for Council interaction with MSD and North Carolina legislature - Suggestion to appoint a Process Manager to provide regular updates to Council.

On August 1, there was a meeting with MSD and Malcolm Pirnie/Arcadis to review project scope, establish timelines for study concerning Impact on MSD Rate Payers of Proposed Consolidation/Merger (1) November 2012 – report on potential impacts to MSD ratepayers of merger with Asheville; and (2) January 2013 – report on potential impacts to MSD ratepayers of merger with other systems in the region.

On August 7, there was a meeting of Ad Hoc City Council committee to discuss next steps for Council consideration.

On August 8, there was a meeting of COA Impact Analysis Team (Finance, WR, IT, HR, Admin) as part of internal review. Established sub-task work groups (1) MSD merger study relations; (2) Internal financial analysis; (3) Asset fair market value; (4) Governance models; and (5) Internal and external communications.

In response to Councilman Bothwell, Mr. Shoaf said that staff will provide Council with an estimate of cost for the analysis work when he brings the contract with Raftelis to Council on August 28.

Vice-Mayor Manheimer and Councilman Davis briefly updated Council on their ad hoc committee meeting, noting that they will be fairly static until the work of Raftelis is completed. The Committee will have a preliminary meeting with representatives from MSD to let them know how the ad hoc committee came to be but that the Committee is waiting for more information before we can have substantive conversations. Mayor Bellamy asked that the ad hoc Committee be prepared to report on their meetings during these bi-weekly updates.

Regarding the City's joint meeting with the legislative delegation on August 27, Mayor Bellamy said that Senator Apodaca, Rep. Keever and Rep. Moffitt will be unable to attend the meeting. Rep. Fisher, Rep. McGrady and Senator Nesbitt are able to attend. She asked for Council consensus on whether the meeting should take place or not, given that this is the second time we have tried to find a suitable date for all involved and the original intent of the meeting was to get clarification from Rep. Moffitt about whether we were proceeding in a fashion that aligned with the Legislative Study Committee mandate of good faith and how our broad efforts would go along with that.

After a brief discussion, it was the consensus of Council to extend a third invitation to our legislators get at least a majority attendance because she wants to make sure we do all we can to try to save our system. She felt strongly that the body of Council hear the same thing as it relates to House Bill 1009 as well as other issues. If that third meeting does not come to fruition, she would continue to try other ways to meet with them as a body.

Vice-Mayor Manheimer hoped the City would consider renewing the contract with Jack Cozort in an effort to help facilitate our legislative interactions. City Attorney Oast said that this will come back to Council as a budget amendment and we will make sure that he discusses Council's expectations with Mr. Cozort. Mayor Bellamy said that the budget amendment would be placed under New Business.

Mayor Bellamy asked for guidance from Council on whether to move forward with a meeting with water and sewer service providers. She provided Council with a listing of those invited and their response to date. That meeting would be to talk about if we are looking at consolidation, it's not just City and MSD, but looking at what does that look like for the region, if it is truly a regional effort. She felt it was important for these bodies to come together because she

felt we should reach out to them and let them know the status of what is happening in the City of Asheville, our process and our possible governance structure. She did not want any other body blindsided like Asheville was.

After a brief discussion, it was the consensus of Council to keep the lines of communication open in as many ways as possible including at the management level. Mayor Bellamy did not support not trying to meet with the surrounding water and sewer provides as she continued to believe that Council should hear all the same information at the same time.

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON 80 HARDESTY ROAD FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DESNITY DISTRICT TO INDUSTRIAL DISTRICT/ CONDITIONAL ZONING TO ALLOW FOR THE OPERATION OF A TYPE III COMPOST FACILITY UTILIZING THREE IN VESSEL COMPOST ROLL-OFFS**

**ORDINANCE NO. 4108 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED ON 80 HARDESTY ROAD FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DESNITY DISTRICT TO INDUSTRIAL DISTRICT/CONDITIONAL ZONING TO ALLOW FOR THE OPERATION OF A TYPE III COMPOST FACILITY UTILIZING THREE IN VESSEL COMPOST ROLL-OFFS**

Urban Planner Julia Fields said that this is the consideration of an ordinance to conditionally zone from RS-2 Residential Single-Family Low Density District to Industrial District/Conditional Zoning for a project identified as Danny's Dumpster Compost Facility located on a portion of 80 Hardesty Road, to allow for the operation of a Type III compost facility utilizing three in vessel compost roll-offs, and a modification request to property line buffer standards as required in Section 7-11-3(d)(1) of the Unified Development Ordinance. This public hearing was advertised on August 3 and 10, 2012.

Ms. Fields said that the subject property is located off of Hardesty Lane in East Asheville. Hardesty Lane is a private drive into City-owned property located off of Azalea Road East. The site has recently been addressed as 120 Hardesty Lane. The subject property is an approximately 5.5 acre portion of a 33.48 acre site owned by the City of Asheville. The larger City-owned property is currently used for gardening/farming and is the location of the City's beneficial fill site.

The applicant, Danny's Dumpster (Danny Keaton), is requesting a conditional zoning amendment from RS2 (Residential Single-Family Low Density District) to INDCZ (Industrial Conditional Zoning District), in order to develop and operate a compost facility on this property. It is proposed that the operations would include the hauling of compostable materials (not vegetable oil) to the facility and the collection of leaves and wood chips at the site. All materials will be mixed and processed into finished compost/quality topsoil as a by-product. The process will require an employee to be on site only four hours per day, five days per week. The site abuts a Norfolk Southern Railway line and a small portion is in a flood protected area. Three "in-vessel roll-off structures" will be located on the site. No potable water is available onsite. Fire suppression will be provided via a dry hydrant/existing retention pond on the larger parcel.

A modification is requested to waive the property line buffer standards as set forth in Section 7-11-3(d)(1) due to the nature of the location on the site and the nature of the operation and surrounding uses.

In addition to the standard conditions, staff recommends that a condition be added to require all traffic to and from the site to be routed off of Azalea Road East via Tunnel Road and

not through the recreation complex. The Planning and Zoning Commission, at a meeting on July 19, 2012, expressed support for this condition and recommended an additional condition that the operation be an in-vessel compost process only.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications Manual. The existing site plan shows compliance with most applicable development standards.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposed use would be located in a low lying area between the Swannanoa River and the I-240 right-of-way and Norfolk Southern rail line. Topographically and due to significant vegetation the site is not visible from many surrounding areas.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The site is proposed to be located on a portion of a larger site that hosts a landfill for structural and debris fill and gardening and farming sites. The proposed operation will be compatible with these uses and is far removed from other land uses off of Azalea Road.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   No permanent, habitable structures will be placed on the site. Three in-vessel roll-off structures will be placed on the site to accommodate the composting operation. The operation will be in harmony with the abutting uses on the same large parcel.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The proposed use supports the comprehensive plan goal of diverting solid waste and organic materials from landfill disposal through creative/innovative measures. Additionally, it aligns with Council's strategic planning objective of supporting opportunities for reducing city-wide solid waste.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   There is no potable water needed for this operation. Fire suppression will be handled via a dry hydrant/existing retention pond on the larger parcel. A portable toilet will be required on site. All other technical aspects of this project have or can be met by the applicant.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The use will be located on a drive that experiences little traffic. A proposed condition would require that traffic to the site be routed off of Azalea Road East via Tunnel Road

and not through the recreation complex located on Azalea to the west. No new drive will be created for this use.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

This conditional zoning request was recommended for approval by a 4-0 vote of the Planning and Zoning Commission; the only person to speak at the commission meeting was the applicant.

Pros:

- The proposed use provides for a much needed facility in Asheville which will support City goals for diverting waste from landfill disposal.
- The proposed use is located on currently unused City property and is compatible with other uses on that property.

Con:

- None noted.

Staff and the Planning and Zoning Commission recommend approval to a modification to waive the property line buffer standards as set forth in Section 7-11-3(d)(1) and subject to the standard conditions listed below and the following additional conditions: (1) That traffic to and from the site be routed off of Azalea Road East via Tunnel Road and not through the recreation complex located on Azalea to the west; and (2) That the operation be an in-vessel compost process only.

Mayor Bellamy opened the public hearing at 7:23 p.m. and when no one spoke, she closed it.

In response to Councilman Davis, Mr. Danny Keaton said that because of continuous air being pumped through the material, there would be no odor.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hunt found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No.4108, to conditionally zone to consider conditional zoning from RS-2 Residential Single-Family Low Density District to Industrial District/Conditional Zoning for a project identified as Danny's Dumpster Compost Facility located on a portion of 80 Hardesty Road, to allow for the operation of a Type III compost facility utilizing three in vessel compost roll-offs, and approval of the modification request to waive the property line buffer standards as required in Section 7-11-3(d)(1) of the Unified Development Ordinance, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10 of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with this ordinance, will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (6) That traffic to and from the site be routed off of Azalea Road East via Tunnel Road and not through the recreation complex located on Azalea to the west; and (7) That the operation be an in-vessel

compost process only. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 436**

**B. PUBLIC HEARING TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR LINAMAR CORPORATION**

**RESOLUTION BOOK NO. 12-185 - RESOLUTION AUTHORIZING AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR LINAMAR CORPORATION FOR PHASE II EXPANSION**

**ORDINANCE NO. 4109 - BUDGET AMENDMENT FOR FIRST YEAR ECONOMIC DEVELOPMENT PAYMENT**

This public hearing was advertised on August 3, 2012.

Economic Development/Civic Center Director Sam Powers said that this is the consideration of a resolution approving a $1,000,000 economic development incentive grant for Linamar Corporation and the corresponding budget amendment in the amount of $200,000 from property tax revenue for the estimated first year's installment of this five-year economic development incentive grant.

This is consideration for an economic development incentive grant under the City of Asheville Economic Development Incentive policy. Linamar Corporation is a world-class designer and diversified manufacturer of precision metallic components and systems for the automotive industry, energy and mobile industrial markets. The company is proposing new, taxable, capital investment of $75,000,000 for additional production equipment and facility improvements at the local facility in South Asheville, and has requested consideration of a cash grant under the City of Asheville Economic Development Incentive policy. The purpose of this investment is to allow Linamar to expand its operations, and is projected to result in the creation of a substantial number of jobs that pay at or above the median average wage for Buncombe County.

Linamar has requested consideration of a performance-based incentive grant under the City of Asheville Economic Development Incentive policy. The City proposes to offer Linamar a performance-based grant not to exceed $1,000,000. The performance-based grant will be paid over a five (5) year period. Payments begin after the investment is made, taxes are paid and verified, and the company requests payment. The amount of the annual payment will take into consideration the estimated annual ad valorem property tax revenue attributable to the capital improvements, and each annual payment is projected to equal 75% of said estimated revenue. Any amounts paid to Linamar pursuant to the Agreement are subject to adjustment or recapture if the terms and conditions of the Agreement as to investment and job creation are not fulfilled.

The City will fund the payments from the general fund. The purpose of the proposed cash grant is to encourage Linamar to proceed with its proposed expansion. Staff believes that the project will further the economic interests of the area served by the City in several ways, including, but not limited to: (a) creating a substantial number of jobs having a wage at or above the median average wage for Buncombe County; (b) enhancing the City's tax base and the City's tax revenues; and (c) encouraging the retention and expansion of a major industrial operation in an existing facility.

The economic development incentive grant ties into City Council's Strategic Operating Plan as it addresses multiple focus areas of the Plan.

Pros:

- Performance driven grant that is distributed after job and investment is achieved;

- Supports job creation and capital investment in manufacturing in Asheville;
- Supports retention and expansion of existing industry in the City;
- Supports development of an identified economic cluster in the city; and,
- Supports regional and state cooperation in the project.

Con:

- Grant is formulated based on use of approximately 75% of the value of new incremental tax revenue for a five year period.

The project has a positive fiscal impact on tax revenues received by the City. Initially (during the grant period), the City will receive approximately 25% of the new incremental tax revenues from the project. After five years, the City will henceforth capture 100% of the new taxes.

City staff recommends Council approve the resolution authorizing an economic development incentive grant for Linamar Corporation not to exceed $1,000,000 and also the corresponding budget amendment in the amount of $200,000 from property tax revenue for the estimated first year's installment of this economic development incentive grant.

Mayor Bellamy opened the public hearing at 7:34 p.m.

Mr. Ben Teague, representing the Economic Development Coalition, read a letter from executives of Linamar who were unable to attend this meeting. They appreciated the support of the City and felt it was a privilege to be a part of the Asheville community. They hoped to be an exemplary citizen for many years to come.

Mayor Bellamy closed the public hearing at 7:36 p.m.

Mayor Bellamy conveyed her appreciation of having 250 new jobs coming to our community paying above Buncombe County wage. She was also excited about the fact that they are partnering with A-B Technical Community College for training many Asheville and Buncombe County residents.

Councilman Hunt, liaison to the Economic Development Coalition, highlighted how adding jobs don't happen by accident, but with community leadership. He thanked the Economic Development Coalition for their hard work on bringing Linamar to Asheville.

Councilman Bothwell said we live in a business culture in which large corporations extort this kind of money from communities, or they would locate elsewhere. He could not support this action.

Mayor Bellamy said that in the multi-decade model, the investment of incentives more than pay for themselves, and if Asheville is not going to offer incentives, then she felt it would put us out of the competitive field.

Mayor Bellamy said that members of Council have previously received copies of the resolution and ordinance and they would not be read.

Councilman Hunt moved for the adoption of Resolution No. 12-185. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Bothwell voting "no."

**RESOLUTION BOOK NO. 35 – PAGE 46**

Vice-Mayor Manheimer moved for the adoption of Ordinance No. 4109. This motion was seconded by Councilman Hunt and carried on a 6-1 vote, with Councilman Bothwell voting "no."

## V. UNFINISHED BUSINESS:

### A. COUNCIL TO DETERMINE WHO TO INTERVIEW FOR THE PLANNING & ZONING COMMISSION

It was the consensus of Council to interview Joe Minicozzi, Abigail Emison (the two individuals who completed the required essay questions) and the two seated members Mark Brooks and Holly Shriner.

## VI. NEW BUSINESS:

### A. RESOLUTION NO. 12-186 - RESOLUTION CALLING FOR A SPECIAL ELECTION ON THE QUESTION OF WHETHER THE CITY SHOULD SELL OR LEASE ITS WATER SYSTEM

City Attorney Oast said that this is the consideration of a resolution requesting referendum on the sale or lease of the City's water system.

The general law in North Carolina is that there must be specific authority to conduct an election or referendum on any matter. Municipalities are authorized, if not required, by general law to hold referenda or special elections for certain purposes. One of the purposes for which a special election or referendum is authorized is in regard to the sale, lease or discontinuation of its water system. N.C.G.S. 160A-321 provides as follows:

(a) A city is authorized to sell or lease as lessor any enterprise that it may own upon any terms and conditions that the Council may deem best. However, except as to transfer to another governmental entity pursuant to G.S. 160A-274 or as provided in subsection (b) of this section, a city-owned enterprise shall not be sold, leased to another, or discontinued unless the proposal to sell, lease or discontinue is first submitted to a vote of the people and approved by a majority of those who vote thereon. Voter approval shall not be required for the sale, lease, or discontinuance of airports, off-street parking systems and facilities, or solid waste collection and disposal systems.

(b) For the sale, lease or discontinuance of water treatment systems, water distribution systems, or wastewater collection and treatment systems, a city may, but is not required to, submit to its voters the question of whether such sale, lease, or discontinuance shall be undertaken. The referendum is to be conducted pursuant to the general and local laws applicable to special elections in such city.

As Council knows, a legislative study committee that met during the winter and spring of 2012 made several recommendations. One of the recommendations was that the water system and sewer system be merged or consolidated.

Pursuant to N.C.G.S. 163-287, the City has the authority to call a special election "as permitted by law." Subsection (b) of N.C.G.S. 160A-321, which was added to the statute in 2011, permits, but does not require, a city to seek voter approval for the sale, lease, or discontinuance of water treatment and distribution systems. To the extent that the consolidation could include a sale or lease of the system, N.C.G.S. 160A-321 allows the City to seek voter approval. The Council must first adopt a resolution specifying the details of the election, and specifying the date. The date proposed is November 6, the date of the upcoming general election. The details of the

election would include the language of the question to be put to the voters, reading substantially as follows:

> "Shall the City of Asheville undertake the sale or lease of its water treatment system and water distribution system, including the reservoirs, watershed lands, water lines, pump stations, storage tanks and other facilities used by the City of Asheville for the treatment and distribution of water?"

This language is a suggestion, and may be revised, but should be consistent with the statutory authorization.

The language of the statute limits the voters eligible to participate in such a referendum to City voters. The results of the referendum would be binding such that, if the vote was "no," the system could not be sold or leased.

He provided Council with a resolution for Council's consideration calling for a special election pursuant to N.C.G.S. 160A-321 on November 6, 2012, and setting out the question to be put to the voters.

A cost estimate for this election has been requested from the Board of Elections.

If Council desires to call for special election, adoption of the resolution is recommended.

Vice-Mayor Manheimer said that at the July 31 worksession she introduced the idea of conducting a referendum in the November election regarding the potential sale or transfer of our water system. In compliance with the Legislative Study Committee report, the City has put together a group to begin to talk to MSD and explore all our options. As a body, we are not in favor of any legislation transferring our water system.

In response to Councilman Bothwell, City Attorney Oast said that if the vote is not in favor of selling or leasing the water system, the vote would be binding.

Mayor Bellamy asked if we hold a referendum and the citizens say they don't want the City to sell or lease the water system but the State makes us give it away, do we negate the opportunity to be compensated. She didn't want to do anything to stop Asheville from being compensated. City Attorney Oast said that the use of sale or lease in the statute contemplates a voluntary transaction. The statute does not address a situation where the City was forced to transfer its assets involuntarily.

Councilman Hunt suggested an amendment to the language on the ballot; however, after a brief discussion he withdrew his suggestion.

Councilman Pelly suggested a friendly amendment to his motion for the language on the ballot to read "Shall the City of Asheville undertake the sale or lease of its water treatment system?" Vice-Mayor Manheimer accepted the friendly amendment.

In response to Councilman Davis, City Attorney Oast said the only City voters will be allowed to vote on this question, not all water ratepayers.

Councilman Davis said that he would support this resolution as he felt it was important to be united in this effort, but he had some reservations about this being the best thing.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Pelly moved for the adoption of Resolution No. 12-186. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 47**

**B. DISCUSSION OF N.C. LEAGUE OF MUNICIPALITIES' LEGISLATIVE AGENDA**

City Attorney Bob Oast said that the N.C. League of Municipalities (NCLM) is developing its legislative advocacy agenda for 2012-13. The NCLM is requesting input from member municipalities, and has asked for that input to be provided by August 31. This continues a process that the NCLM began in 2010 for 2011-13 Session of the North Carolina General Assembly

NCLM's legislative agenda is oriented to matters of importance to municipalities across the State, not to any particular municipality. Individual cities, including Asheville, develop and pursue their own legislative agendas. When the NCLM can help with their individual agendas, they do.

For guidance on the kinds of subjects that the NCLM is seeking input on, he provided Council with a copy of the current NCLM legislative advocacy agenda.

The purpose of having this item on the agenda today is to start the discussion. The item will appear again on August 28 for action. As Council knows, we anticipate meeting with some of our legislators on August 27, and this meeting should provide some useful information about what to expect in the next session, which begins in January.

He would be glad to obtain more information on any legislative matter for Council, or to talk with NCLM staff about a particular matter

Mayor Bellamy asked two issues be added to our state legislative agenda, because they have a statewide impact and are not our issues to govern (1) the state law for women to go topless; and (2) issues around mopeds. She felt we needed to refer these to the NCLM to add to their agenda.

Councilman Hunt said there is a movement to make it so that most, if not all, debt issued by a municipality would be subject to a general referendum of voters. That would make our lives very difficult to finance capital projects. There are others, especially on the fiscal front, that municipalities are increasingly limited on their ability to conduct business. At Mayor Bellamy's suggestion, Councilman Hunt said that he would be happy to consider serving on a NCLM committee that looks at these issues.

Councilman Smith asked that they consider legislation that would allow cities and counties to be able to set the occupancy tax rates for hotels/motels within their borders.

At the August 28 meeting, she urged Council to bring up any of their statewide issues which we can forward onto the NCLM.

**C. BOARDS & COMMISSIONS**

Regarding the Civic Center Commission, the following individuals applied for the vacancy: Deanna Reeder, Grant Millin, Angela Rutledge, Chris Bubenik, Antonio Hinton, Arthur Ollendorff, Elizabeth Franks and Suzanne Rice. It was the consensus of Council to instruct City Clerk Burleson to arrange interviews for Chris Bubenik, Antonio Hinton and Arthur Ollendorff.

Regarding the Noise Ordinance Appeals Board alternate seat, the following individuals applied for the vacancy: James Reato, Jessica Byrd and Elizabeth Franks. Because of the revisions to the noise ordinance currently being advertised, it was the consensus of Council to re-advertise for the alternate seat.

Regarding the Airport Authority, Mayor Bellamy was concerned about City representation on the Authority. She was also concerned that the Airport Authority will be meeting on August 17; however, it was her understanding that the Authority will not seat her as a member of the Authority, even though City Council appointed her on June 26, 2012. City Attorney Oast said that Mayor Bellamy can attend the meeting as a member of the public; however, our communication with the Authority indicates that she will not be seated.

**RESOLUTION NO. 12-187 - RESOLUTION APPOINTING MEMBERS TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Americans with Disabilities Act (ADA) Compliance Committee.

The terms of Julie Fulwood (representing the business or non-profit sector) and Teresa Foster-Moorefield (representing the education & the health/medical profession) expire on August 22, 2012. In addition, there currently exists a vacancy for a representative of the disabled community, whose term will expire August 22, 2013.

The following individuals have applied for a vacancy on the ADA Compliance Committee: Florence Bannon and Daniel Bridges.

It was the recommendation of the Boards & Commissions Committee, at the suggestion of City Attorney Oast, that (1) the Committee remain in existence, and that the committee members stay on in an "inactive" status; and (2) appoint Florence Bannon (representing the disabled committee) to the Committee to serve in an "inactive" status. In the event that a hearing is required, or the Committee is required to transact other business, the Committee members will be contacted by the Secretary to the Committee.

Councilman Smith moved to (1) reappoint Julie Fulwood and Teresa Foster-Moorefield to the ADA Compliance Act Compliance Committee on an "inactive" status; and (2) appoint Florence Bannon to an "inactive" status and in the event that a hearing is required, or the Committee is required to transact other business, the members would be contacted by the Secretary to the Committee. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 48**

**RESOLUTION NO. 12-188 - RESOLUTION APPOINTING MEMBERS TO THE HUB COMMUNITY ECONOMIC DEVELOPMENT ALLIANCE**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the HUB Community Economic Development Alliance.

The terms of Steve Cochran, Richard Stiles, Cheryl McMurray and Scott Dedman, members of the Alliance expire on August 22, 2012.

The following individuals have applied for a vacancy: Antonio Hinton, Kelly Erin-Spinney, Julie Mayfield and Grant Millin.

It was the consensus of the Boards & Commissions Committee to reappoint Mr. Richard Stiles, appoint Julie Mayfield and interview for the remaining vacancies.

Councilman Hunt moved to (1) reappoint Richard Stiles to serve an additional three-year term, term to expire August 22, 2015, or until his successor has been appointed; (2) appoint Julie Mayfield to serve a three year term, term to expire August 22, 2015, or until her successor has been appointed; and (3) re-advertise for the remaining two vacancies. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 49**

**RESOLUTION NO. 12-189 - RESOLUTION APPOINTING MEMBERS TO THE POLICE OFFICERS AND FIREFIGHTERS DISABILITY REVIEW BOARD**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Police Officers and Firefighters Disability Review Board.

The terms of Stephanie Cooper, Dr. Steven Hulkower and Maggie Burleson expired on July 19, 2012.

It was the recommendation of the Boards & Commissions Committee, at the suggestion of City Attorney Oast, that the Board remain in existence, and that the board members stay on in an "inactive" status. Board members Stephanie Cooper, Dr. Steven Hulkower and Maggie Burleson have agreed. In the event that a hearing is required, or the Board is required to transact other business, the Board members will be contacted by the Secretary to the Board.

Councilman Bothwell moved to reappoint Stephanie Cooper, Dr. Hulkower and Maggie Burleson to the Police Officers and Firefighters Disability Review Board on an "inactive" status, and in the unlikely event that a hearing is required, or the Board is required to transact other business, the members would be contacted by the Secretary to the Board. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 50**

**RESOLUTION NO. 12-190 - RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Buncombe County Tourism Development Authority.

The term of Bob Patel, representing an owner or operator of a hotel, motel or other taxable tourist accommodation with more than 100 rental units) expire on August 30, 2012.

No individuals have applied for this vacancy.

It was the consensus of the Boards & Commissions Committee to reappoint Mr. Patel.

Mayor Bellamy moved to reappoint Mr. Bob Patel (representing an owner or operator of a hotel, motel or other taxable tourist accommodation with more than 100 rental units) expire on August 30, 2012) to serve an additional three-year term, term to expire August 30, 2015, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 51**

## VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mayor Bellamy reminded the public that the first day of Asheville City Schools starts on August 15 and the County Schools on August 16. She urged everyone to slow down, especially in school zones. She also noted that on August 15 the Smoky Park Bridge will be dedicated to Fire Captain Jeffrey Bowen.

Councilman Smith was pleased to announce the Land-of-Sky Regional Council was awarded a grant for agriventures which is going to utilize the agriculture talent and potential that we have in the region to serve as a business incubator.

The following individuals expressed concerns about management at the Asheville-Buncombe Community Christian Ministry (ABCCM), citing discrimination of women veterans in the ABCCM's Steadfast House: Mr. Monroe Gilmour, coordinator of Western North Carolina Citizens Ending Institutional Bigotry (provided council with his comments); Ms. Alyce Knaflich (provided Council with a brochure on veterans rights); Ms. Browne Hollowell; Ms. Marlene J. Perry; Mr. Anthony C. Hamilton; and Ms. Darlene Minton. City Manager Jackson said that he would gather background information on this matter, talk to Mr. Gilmour and report to the Housing & Community Development Committee (prior to City Council) on if there is a role for the City to play in this process.

Ms. Patricia Dockery was concerned that she received a letter outlining community meetings for revisions to the current noise ordinance; however, no locations were disclosed. City Manager Jackson said that he will provide Council and Ms. Dockery the communication plan by the end of the week.

Rev. Lisa Landis said that on November 5, 2011, she was arrested for exercising her first amendment rights (in which she was found not guilty), and said she would seek a lawsuit against the City for falsely prosecuting her if the City would not settle with her. Mayor Bellamy referred Ms. Landis to City Attorney Oast and suggested she put her request in writing.

Mr. Victor Ochoa said it was important that Asheville take a stand on not losing our water system. He read a draft rights-based ordinance which would make it illegal for MSD or any private corporation to take control of our water system.

**Closed Session**

At 8:37 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: The Institute of Southern Studies, Inc., d/b/a Carolina Public Press, Gannett Pacific Corporation, d/b/a Asheville Citizen-Times, Green Line Media, Inc., d/b/a Mountain Xpress, Western North Carolina Public Radio, Inc., d/b/a WCQS, and Sinclair Broadcast Group, Inc., d/b/a WLOS TV, the City of Asheville; Buncombe County District Attorney's Office; William Hogan; Brian Hogan; Cheryl Intveld; Stony Gonce and Mary Ann Wilcox. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 9:19 p.m., Vice-Mayor Manheimer moved to come out of closed session. This motion was seconded by Councilman Bothwell and carried unanimously.

**VIII. ADJOURNMENT.**

Mayor Bellamy adjourned the meeting at 9:19 p.m.

Magdalena Bouleson
CITY CLERK

MAYOR

Tuesday – August 28, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Deputy City Clerk Philip Kleisler

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Davis gave the invocation.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 14, 2012**

**B. RESOLUTION NO. 12-191 - RESOLUTION AUTHORIZING THE APPLICATION TO THE N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES TO INSTALL FLEET GPS TRACKING EQUIPMENT AND ROUTING SOFTWARE**

Summary: The consideration of a resolution authorizing the City Manager to apply for a grant from the N.C. Dept. of Environment and Natural Resources (DENR) in the amount of $32,000 to install fleet GPS tracking equipment and routing software.

The City of Asheville is committed to carbon footprint reductions in municipal operations, recently the highest priority in this effort is focused on vehicle fuel reductions. Two strategies to achieve these goals focus on operational management of routing and driver behavior change relating to idling. Receiving funds through this grant will allow staff to work on both strategies by installing GPS units on 43 fleet vehicles to better understand the travel patterns and routing needs as well as having diagnostic information about engine idling patterns.

This action complies with City Council's Strategic Operating Plan to continue to identify strategies and costs for maintain the city's annual energy reduction goal of 4%.

Pro:

- Reduce municipal carbon footprint

Con:

- Requires City matching funds of $25,000

As noted above, the City match for this grant is $25,000. CIP funding that was approved during the annual budget process for fleet replacement will serve as the City match. The City would be responsible for replacement of the tracking equipment and software at the end of its useful life.

City staff recommends City Council adopt a resolution authorizing the City Manager to apply for a grant from the N.C. Dept. of Environment and Natural Resources to install fleet GPS tracking equipment and routing software to improve fuel efficiency of sanitation and snow plowing activities.

**RESOLUTION BOOK NO. 35 – PAGE 52**

**C. RESOLUTION NO. 12-192 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE TANGERINE BALL**

**RESOLUTION NO. 12-193 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE AVLCX**

**RESOLUTION NO. 12-194 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT OKTOBERFEST**

**RESOLUTION NO. 12-195 - RESOLUTION AMENDING RESOLUTION NO. 12-167 MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS & FUN FESTIVAL**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at The Tangerine Ball on September 15, 2012, AVLCX on November 3, 2012, Oktoberfest on October 13, 2012; and an amendment to Resolution No. 12-167, due to a reduction in the event boundaries and hours of operation for the Lexington Avenue Arts & Fun Festival on September 1 and 2, 2012.

- The Asheville Area Arts Council has requested through the City of Asheville Development Services Center that City Council permit the sale of beer and/or unfortified wine at The Tangerine Ball and allow for consumption at this event.

  The Tangerine Ball will be held on Saturday, September 15, 2012, from 6:00 p.m. – 9:00 p.m. on Walnut Street between the intersections of Broadway and Carolina Lane, and on Buxton Avenue between the intersections of Collier Avenue and Millard Avenue as per the event area limits referenced on the accompanying site maps.

- Trips for Kids WNC has requested through the City of Asheville Development Services Center that City Council permit the sale of beer and/or unfortified wine at the AVLCX and allow for consumption at this event.

  The AVLCX will be held on Saturday, November 3, 2012, from 2:00 p.m. – 8:00 p.m. within Carrier Park, as per the event area limits referenced on the accompanying site map.

- The Asheville Downtown Association has requested through the City of Asheville Development Services Center that City Council permit the sale of beer and/or unfortified wine at Oktoberfest and allow for consumption at this event.

  Oktoberfest will be held on Saturday, October 13, 2012, from 12:00 p.m. – 6:00 p.m. on Wall Street and extending through a one-lane portion of Battery Park Avenue, as per the event area limits referenced on the accompanying site map.

- Arts2People has requested through the City of Asheville Development Services Center that City Council amend Resolution No. 12-167 due to a reduction in the event hours and designated event boundary pertaining to the sale and consumption of beer and/or unfortified wine at the Lexington Avenue Arts & Fun Festival.

  The Lexington Avenue Arts and Fun Festival will be held on Saturday, September 1, 2012 from 5:00 p.m. to 10:00 p.m. within the boundary of the Rankin Avenue Monthly Parking Surface Lot East and again on Sunday September 2, 2011 from 11:00 a.m. to 9:00 p.m. within the boundaries of Lexington Avenue between the intersections of College Street and the I-240 overpass, Walnut Street between Carolina Lane and Rankin Avenue, Rankin Avenue between Walnut Street and Hiawassee, Hiawassee between Rankin Avenue and Carolina Lane, the Rankin Avenue Monthly Parking Surface Lots East and West on Rankin Avenue between Walnut and Hiawassee, and the metered parking lot at Lexington Avenue and the I-240 Underpass, as per the event area limits referenced on the accompanying site map.

These actions have no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for Run Amok Productions, Asheville Area Arts Council, Trips for Kids WNC and the Asheville Downtown Association.

Con:

- Potential for public safety issues

There is no fiscal impact.

City staff recommends City Council amend Resolution No. 12-167 for the Lexington Avenue Arts & Fun Festival as requested, and adopt new resolutions authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at The Tangerine Ball, AVLCX, Oktoberfest.

**RESOLUTION NO. 12-192 - RESOLUTION BOOK NO. 35 – PAGE 53**
**RESOLUTION NO. 12-193 - RESOLUTION BOOK NO. 35 – PAGE 57**
**RESOLUTION NO. 12-194 - RESOLUTION BOOK NO. 35 – PAGE 60**
**RESOLUTION NO. 12-195 - RESOLUTION BOOK NO. 35 – PAGE 63**

**D. RESOLUTION NO. 12-196 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO FUND THE METROPOLITAN PLANNING PROGRAM, SECTION 5303 OF THE FEDERAL TRANSIT ADMINISTRATION**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the North Carolina Department of Transportation (NCDOT) to fund the Metropolitan Planning Program, Section 5303 of the Federal Transit Administration (FTA).

The FTA Section 5303 Metropolitan Planning Program is part of the annual Unified Planning Work Program (UPWP) of the French Broad River Metropolitan Planning Organization (FBRMPO), which outlines transportation planning tasks to be performed by the FBRMPO. The Metropolitan Planning Program is designated to pay exclusively for transit planning activities, such as grants administration and reporting activities, short range and long range transit planning, transportation improvement program preparation, Title VI and DBE programs, and planning and operational analyses. The funds are used to supplement the Transit Projects Coordinator position (90% of the grant) and a portion of the Transportation Manager position (the remaining 10%) for time spent on transit planning.

FY 2012-13 funding totals $57,610. The subject grant will provide 80% of the anticipated funding ($46,088), the North Carolina Department of Transportation will provide 10% ($5,761), and the City will provide the remaining 10% ($5,761). The grant funding and the City's local match in the amount of $5,761 are currently budgeted in the Transportation Department's approved budget for the current fiscal year.

This action complies with the current City Council's Strategic Operating Plan in the fiscal responsibility focus area by operating the City of Asheville to the highest levels of fiscal responsibility.

The Transit Commission supports the subject action.

Pros:

- The subject grant supplements funding for two existing positions.
- The subject grant enables the City of Asheville to use $51,849 in Federal and State funds for transit planning activities.

Con:

- A 10% local match in the amount of $5,761 is required.

The total grant funding for Fiscal Year 2012-13 is $57,610. The City is required to provide a 10% local match in the amount of $5,761. The anticipated grant funding and the City's local match in the amount of $5,761 are currently budgeted in the Transit Services fund.

City staff recommends that City Council adopt a resolution authorizing the City Manager to enter into an agreement with the North Carolina Department of Transportation to fund the transit planning program, Section 5303 Metropolitan Planning Grant of the Federal Transit Administration for FY 2012-13.

**RESOLUTION BOOK NO. 35 – PAGE 66**

**E. RESOLUTION NO. 12-197 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SPORTS FIELD INC. FOR THE REPLACEMENT OF THE TURF, THE RESTORATION AND REPAIR OF THE IRRIGATION AND DRAINAGE SYSTEMS TO MCCORMICK BASEBALL FIELD**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Sports Field, Incorporated for the replacement of the turf, the restoration and repair of the irrigation and drainage systems to McCormick Baseball Field.

McCormick Field has been a professional baseball venue since construction in 1924. It is recognized as one of the premier minor league ballparks in the nation. The Tourists are the Single A affiliate of the National League Colorado Rockies.

In an effort to meet the specific needs of the minor league baseball and to maintain the field in superior condition the scope of work required the successful bidder to have and supply at least the following:

- Built or renovated three professional National Association affiliated fields;
- Prefer member of American Sports Builders Association;
- STMA National Membership required;
- References required.

Sports Field, Incorporated was the low responsible bid. The project has unknowns such as making the necessary amount repairs and improvements to the irrigation and drainage systems, the number of quick connects to be modified to one-inch, the amount of 100% golf green sand, and the amount to raise or lower the infield to meet the new playing surface. The base bid with alternatives is $170,929. Unit prices were included for additional golf green sand at $43.00 per ton.

Due to the age and unknown condition of the drainage and irrigation systems, an amount of uncertainty exists for additional change orders. Due to the potential for change orders, staff recommends Council authorize change order up to the approved budget.

This project supports the City's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities.

Pros:

- McCormick Baseball Field is a premier location for minor league baseball and an asset to the City and community.
- The approval of the resolution authorizing the contract for construction allows the replacement, repair, and restoration work to begin.
- Funding for the project is currently in the CIP budget at $300,000.

Con:

- A delay will allow the irrigation and drainage system to continue being less than totally effective, affect the playing field, and could cause issues with Professional Baseball.

The cost of the base bid with alternates for the construction to repair the drainage and irrigation systems and to replace the turf is $170,929. Additional costs have been identified for specific conditions that include a fixed cost with unknown quantities. Additional unknown conditions are anticipated in the irrigation and drainage systems. The total cost of the project including the unknowns is anticipated not to exceed $225,000 of the $300,000 already approved in the CIP budget for the project.

City staff recommends that City Council adopt a resolution authorizing the City Manager to sign the contract with Sports Field, Incorporated and future change orders associated with the project not to exceed the total approved budget amount.

Vice-Mayor Manheimer and Councilman Davis responded to Ms. Judy Strong when she urged City Council to apply to the Tourism Development Authority for use of the Product Development Funds for McCormick Field renovation, and not use her tax dollars.

At Mayor Bellamy's request, it was the consensus of Council to instruct City Manager Jackson to report at the November 13, 2012, agenda staff's prioritization of projects for use of the Product Development Funds.

**RESOLUTION BOOK NO. 35 – PAGE 67**

**F. MOTION APPROVING THE BOARD OF ALCOHOLIC BEVERAGE CONTROL'S TRAVEL POLICIES ADOPTED JUNE 28, 2011**

**G. RESOLUTION NO. 12-198 - RESOLUTION DECLARING THE INTENT OF THE CITY TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION AND IMPROVEMENT OF VARIOUS CAPITAL PROJECTS AND THE ACQUISITION OF VEHICLES AND EQUIPMENT FROM THE PROCEEDS OF AN**

**INSTALLMENT FINANCING CONTRACT TO BE EXECUTED AND DELIVERED IN FISCAL YEAR 2013**

Summary: The consideration of a resolution declaring the intent of the City to reimburse itself for capital expenditures incurred in connection with the acquisition, construction and improvement of various capital projects and the acquisition of vehicles and equipment from the proceeds of an Installment Financing Contract to be executed and delivered in FY 2013.

The City of Asheville plans to issue debt in FY 2013 to fund Council approved capital projects authorized as part of the FY 2013 budget. These projects include the construction and improvement of streets and sidewalks in the vicinity of Craven Street; the purchase and installation of LED streetlights, and; the purchase of vehicles and equipment. The City reasonably expects the maximum principal amount necessary to fund these projects is $4,000,000.

The purpose of the Reimbursement Resolution is to provide the City with the ability to move forward with the projects and reimburse its accounts upon the issuance of the debt. The Resolution does not specifically authorize the issuance of the debt. Those resolutions will be drafted in connection with the debt issuance in early 2013. Additionally, as a number of the projects, vehicles and equipment are bid, the actual size of the new money financing can be further refined.

Pro:

- Enables the City to begin spending money on the Council's approved capital projects, vehicles and equipment that were to be financed from debt proceeds.
- Proceeding with the construction projects now, in a 'soft market' may result more aggressive bidding and lower costs.

Con:

- Lost opportunity to earn interest (although at very low interest rates in the range of 1/10 of 1% to 1/4 of 1%) on the City's unrestricted cash and investments which are temporarily diverted to pay for the capital projects pending reimbursement from the debt issuance.

The Reimbursement Resolution will result in some minimal loss of interest income. Bidding and proceeding with the authorized capital projects may result in better pricing thus lower the actual amount of the debt financing. The repayment of the debt issuance is incorporated in the debt management plan through the capacity being generated by the retirement of existing debt.

Staff recommends City Council adopt the resolution.

**RESOLUTION BOOK NO. 35 – PAGE 68**

**H. RESOLUTION NO. 12-199 - RESOLUTION SETTING A PUBLIC HEARING ON SEPTEMBER 11, 2012, TO CONSIDER AUTHORIZING THE SALE OF PROPERTY LOCATED AT HAYWOOD STREET AND PAGE AVENUE IN DOWNTOWN ASHEVILLE TO MCKIBBON HOTEL GROUP FOR ECONOMIC DEVELOPMENT PURPOSES**

Summary: The consideration of a resolution setting a public hearing on the question of approving the sale of property located at Haywood Street and Page Avenue in downtown Asheville to McKibbon Hotel Group for economic development purposes.

The City is considering selling several parcels of property it owns at 68 and 76 Haywood Street, 33 Page Avenue, and at the intersection of Page Avenue and Battery Park Alley in downtown pursuant to N.C.G.S. 158-7.1 for economic development purposes. That statute authorizes the conveyance of property by private negotiation and sale, but requires that a public

hearing be held first. In addition, notice of the public hearing must be published 10 days in advance, and the notice must contain certain information required by statute. The proposal under consideration is to sell the property to McKibbon Hotel Group for development of a hotel. The conveyance may be subject to conditions to ensure that the purposes of the statute are met. Council's rules provide that public hearings be scheduled by special order, which is the purpose of this resolution.

Adoption of the resolution is recommended.

City Attorney Oast said that in this resolution setting a public hearing Council is also directing the City Clerk to publish a notice. In that notice it states that the City Council intends to convey the property. He said that City Council is not bound to do that, but it is a statement we are required to put in by statute.

In response to Councilman Bothwell regarding the appraisal value of the Haywood Street properties vs. the land at 51 Biltmore Avenue, Finance and Management Services Director Lauren Bradley said that there are several characteristics about the transaction that occurred at 51 Biltmore Avenue that make it not an easy comparable for the land on Haywood Street. Among those considerations is that the City did pay a premium for the 51 Biltmore Avenue land because they determined it would cost us less to pay a premium for land than to dig down further for another layer of parking and it was more cost effective for us to do that. Also there was a premium associated with the cost of the 51 Biltmore Avenue land because we were assembling many parcels of land in order to have enough land to do a project of that size. A third thing that makes it a difficult comparable to 51 Biltmore Avenue is that because the transaction was complicated (multiple purchasers and different parts of land that were converted into a condominium) and it was very different than a straight land sale on Haywood Street.

Councilman Bothwell didn't see any argument that the property across from the US Cellular Center can possibly be a lower value piece of property than 51 Biltmore Avenue.

**RESOLUTION BOOK NO. 35 – PAGE 70**

**I. RESOLUTION NO. 12-200 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH DR. PAUL MARTIN FOR PHYSICIAN SERVICES THROUGH THE CITY'S HEALTH SERVICES DIVISION**

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement for physician services provided through the City's Health Services division.

In January 1995, Council authorized the City Manager to enter into an agreement for part-time physician services in the Health Services division. Dr. Paul Martin entered into a contractual agreement with the City of Asheville to provide three clinic days to City employees and their families. These clinic days have been very successful for Health Services.

This action complies with the Fiscal Responsibility prong of the City of Asheville's Strategic Operating Plan for 2012-13. By offering city employees clinic hours and complimentary health services for non-critical issues, Heath Care funds are saved in unnecessary doctor and emergency room visits, maintaining the city's long term financial commitment to high levels of fiscal responsibility.

Pros:

- The Health Services Clinic and Health Services Satellite Clinic provides on-site care for non-critical health needs
- Onsite care and services for employees saves the City of Asheville money in expenses that are not paid in unnecessary doctor and emergency room visits

- Dr. Martin is a trusted member of the Health Services staff team

Con:

- There are no foreseen cons for these services

This is a one year $120,000 contract, and funds have been budgeted and will be encumbered from the Health Care Fund to cover the cost of this contract.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign an agreement for physician services with Dr. Paul Martin, MD to continue to provide physician services to employees and their families.

**RESOLUTION BOOK NO. 35 – PAGE 71**

**J. RESOLUTION NO. 12-201 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BLUE CROSS/BLUE SHIELD OF NORTH CAROLINA FOR SPECIFIC STOP LOSS INSURANCE COVERAGE**

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement for Specific Stop Loss Insurance with Blue Cross Blue Shield of North Carolina.

The City of Asheville is self-insured for medical and prescription drug expenses less than $150,000 paid during a contract year on behalf of all participants in the City's medical plan. The City purchases Specific Stop Loss Insurance to cover the cost of large or catastrophic claims paid during the contract period that exceed $150,000.

Premiums for Stop Loss Insurance are based on the Medical and Prescription Drug Benefits, demographic make-up of the participants, prior claims experience, industry standards, medical trends / inflation, the claims accumulation period and any known on-going medical conditions.

In an effort to promote Council's employer of choice strategic goal by providing the best and most cost effective insurance, the City of Asheville requested that our brokerage firm, The Ferguson Employee Benefit Agency, initiate a formal bidding process for Specific Stop Loss Insurance. The City received 6 proposals in response to our Request for Proposals. The Ferguson Employee Benefit Agency worked with staff to review these proposals.

After a thorough review the vendor selected is Blue Cross Blue Shield of NC.

This action aligns with City Council's Strategic Operating Plan in that it is an effort to promote Council's employer of choice strategic by providing the best and most cost effective benefit plan for our employees.

Pros:

- Specific Stop Loss insurance rates and terms were the most competitive when compared to additional fees charged by BCBSNC for utilizing an outside stop loss insurance carrier.
- Reduces the length of time between the City's payment of claims and Stop Loss Carrier reimbursement for claims that exceed $150,000 during the contract year.

Con:

- None.

This is a one year $725,000 contract and funds have been budgeted and will be encumbered from the Health Care Fund to cover the cost of this contract.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign an agreement for Specific Stop Loss Insurance with Blue Cross Blue Shield of North Carolina.

**RESOLUTION BOOK NO. 35 – PAGE 72**

**K. RESOLUTION NO. 12-202 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER WITH A&D ENVIRONMENTAL INC. FOR ENVIRONMENTAL REMEDIATION OF CONTAMINATED SOILS AT THE FORMER ASHEVILLE POLICE DEPARTMENT FIRING RANGE AT 82 WESTFELDT ROAD IN FLETCHER, N.C.**

**ORDINANCE NO. 4110 - BUDGET AMENDMENT TO COVER PROJECT COSTS**

Summary: The consideration of a resolution authorizing the City Manager to execute a change order in the amount of $35,000 with A&D Environmental, Inc. for environmental remediation of contaminated soils at the former Asheville Police Department Firing Range at 82 Westfeldt Road in Fletcher, NC for a total contract cost of $128,060.00, and the associated budget amendment in the amount of $63,000 from General Capital Reserves to cover project costs.

Since the 1970s, the Asheville Police Department has operated a small arms firing range near the Asheville Airport for the purposes of police training and small arms certifications. Per the lease agreement between the City of Asheville and the Asheville Regional Airport Authority, this continued use was subject to long range planning and future development of the Asheville Airport. In early 2010, the City was notified that the west side taxiway and runway construction project would impact the firing range, and at that time, the City undertook the process to formally close the small arms firing range.

The N.C. Dept. of Environment and Natural Resources (NCDENR) regulates the closure of gun firing ranges due to the fact that remnants of bullet casings and shell fragments in concentrated areas contain levels of lead and other heavy metals that present hazards to human health. This case being an outdoor firing range, the concentrations of contaminants were found at large soil berms that served as the target practice areas.

The City initially established a budget of $200,000 to provide clean closure of the firing range. In establishing this initial budget, the following project management cost factors affected final project costs:

- At the time of project start up, there was no data attainable to accurately identify the depth and breadth of the soil contamination. For example, initial consultant estimates suggest as much as 2800 tons of soil would require remediation. As the technical analysis continued, that initial scope was refined significantly.
- Optional disposal sites could not be identified until the later part of the process, once final testing determined the final levels of applicable contaminants. Assumptions were initially made that a local/regional approved landfill would be able to accept the soil.
- Initial cost estimates included the City provide some level of in-kind support, to include: site preparation and soil transport. This was not an option once all options were fully studied and soil testing was completed.
- Initial cost estimates assumed normal DENR process steps to adequately treat soil. Once testing was completed, DENR required the use of roll-off containers, as a precautionary step to insure appropriate handling/treatment of affected soil. Roll-off containers significantly increased the cost and limited the City's options on in-kind operational support.

At this point, those funds have been allocated to: (1) Assess and delineate the areas of the firing range that demonstrated high levels of lead and other heavy metals, and provide full documentation to NCDENR to that effect, (2) Based on feedback from NCDENR, develop a method of containing and chemically treating the impacted soils in order to encapsulate the lead and prevent the possibility of lead leachate or chemical runoff, (3) Excavate and mix soils with chemical treatment, (4) Load soils into rolloff containers for storage, and perform rounds of confirmation testing to ensure the chemical treatment was effective, (5) Perform soils testing in former range area to ensure that all lead impact had been removed, (6) Enter into a contract with the Republic Landfill in Enoree, South Carolina for the final disposal of the treated soils as non-hazardous special waste.

The various contracts for these tasks have been within staff's threshold to execute according to the City's Procurement, Purchasing and Contracting Policy. It is the subject of this particular staff report and resolution to address a specific contract that exceeds staff's contracting threshold and therefore requires Council action to approve.

On May 1, 2012, the City of Asheville via the City Manager entered into an informal construction contract in the amount of $93,060 for the excavation and environmental remediation of contaminated soils at the former Asheville Police Department Small Arms Firing Range. A&D's current contract consists of: (1) Perform an initial treatability study on a representative soil sample to determine the amount of chemical reagent needed to encapsulate the existing lead and heavy metals present in the contaminated soils, (2) Excavate and screen impacted soils to remove large debris and generate a consistent soil basis, (3) Divide soil into 20 ton lots and mix in chemical reagent treatment, (4) Store soil in rolloff containers until final testing is completed and soils are ready for transport to a subtitle D approved sanitary landfill.

During the due diligence discussion with A & D, the estimated amount of treated soil was 820 tons, which would require 48 leased rolloff containers for storage. It was also estimated that the soils would be ready for transport in 30 days, implying that all approvals from NCDENR would be completed in that timeframe and that the City would have a contract with a sanitary landfill to accept and properly dispose of the special waste.

Three issues arose during the course of the work that have resulted in additional costs; namely, the soil had to be packed lightly in each container to achieve adequate mixing, and as a result 55 rolloff containers were leased versus the initial 48. Second, of the 55 rolloff containers of soil, 15 of the rolloff boxes did not pass the first round of lab analysis and required a second round of testing therefore delaying transport. Finally, once lab data was collated and discussed with area WNC landfills, it was determined that the closest landfill that would accept the soils was in Enoree, South Carolina. A local disposal solution would have resulted in less transport cost for the City.

In order to accommodate for the delays in the timeline, plus the need for 55 total rolloff containers, and the associated weekly rental on the rolloff containers, a change order is needed in the amount of $35,000 with A&D Environmental, Inc. for a total contract cost of $128,060.00.

This project complies with City Council's strategic plan by supporting the following goals: (1) Safe – the proper mitigation of an environmental issue supports safety and public health, (2) fiscal responsibility – effectively mitigating the City's exposure to an environmental liability through a formal clean closure process with NCDENR prevents future issues associated with this contamination.

Pros:

- Once the project is complete, the City will receive a statement of "No Further Action" from NCDENR, certifying that the cleanup has been completed according to stringent and specific environmental standards.

- Clean Closure is required under the terms of the Airport Lease Agreement, as discussed previously, and the city's successful attainment of clean closure is contributing to the successful completion of the Airport's runway widening project.

Cons:

- Reduction of the Capital Reserve Fund from $400,000 to $337,000.
- From an internal operational perspective, the City Police Department no longer manages its own small arms firing range, which has served to provide significant flexibility to the department's ability to meet and maintain applicable training standards for sworn personnel.

Staff initially budgeted a total of $200,000 for the remediation project - $100,000 in FY12 (from unused CJIS budget) and a new $100,000 in FY13. The final total for the project is estimated at $263,000 and requires a $63,000 budget amendment to cover the proposed change order amount and the tipping fees association with the Republic Landfill in Enoree, South Carolina. Staff recommends that the additional funding come from the Capital Reserve Fund, which there is approximately $400,000 balance, and can be used for unplanned project cost overages.

City staff recommends City Council to (1) adopt the resolution authorizing the City Manager to execute a change order in the amount of $35,000 with A&D Environmental, Inc. for environmental remediation of contaminated soils at the former Asheville Police Department Firing Range at 82 Westfeldt Road in Fletcher, NC for a total contract cost of $128,060.00; and (2) adopt the associated budget amendment in the amount of $63,000 from General Capital Reserves to cover project costs.

**RESOLUTION BOOK NO. 35 – PAGE 73**
**ORDINANCE BOOK NO. 27 - PAGE 442**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Manheimer moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Councilman Bothwell voting "no".

## III. PRESENTATIONS & REPORTS:

### A. REPORT ON 445 BILTMORE AVENUE FIRE

Fire Chief Scott Burnett said that on July 28th, 2011, the City of Asheville suffered a tremendous loss while operating at a six story medical office building structure fire located at 445 Biltmore Ave. Captain Jeff Bowen died in the line of duty and 9 other firefighters were injured while fighting this fire. Over the past 12 months the Fire Department has conducted a Post Incident Analysis to identify areas of improvement for the department. The results of this analysis are included in this report and are organized into two sections: "Contributing Factors" and "Areas for Improvement".

Contributing factors identified by the fire department are:

- The fire was intentionally set
- The building was not protected by an automatic sprinkler system
- The extreme weather conditions that were present

- The standpipe system did not provide water adequately
- Incident command span of control was not optimal

There are 16 areas for improvement identified by the fire department. These areas are within three focus areas:

- Training
  - Rapid Intervention Training
  - SCBA Emergencies Training
  - Incident Command Training
- Span of Control
- Deployment Strategy
  - Current deployment is 17 operational companies, 3 supervisors and 1 support personnel
  - Proposed deployment is 16 operational companies, 4 supervisors and 3 support personnel

The fire department began implementing these improvements in the fall of 2011. The continuous improvement model that has been followed will perpetually facilitate even more enhancements to firefighter safety and levels of service to the community.

Councilman Bothwell noted that during the Public Safety Committee there was considerable discussion about the failure of the standpipe. It appears that one of the values that should have been permanently open was partially closed.

Fire Chief Burnette responded to various questions from Council related mainly due to the standpipe system.

**B. QUARTERLY REPORTS**

**Finance Committee Chair Report**

Vice-Mayor Manheimer, Chair of the Finance Committee, provided Council with a brief update on some major accomplishments during this quarter.

**Housing & Community Development Committee Chair Report**

Councilman Davis, Chair of the Housing & Community Development Committee, provided Council with a brief update on some major accomplishments during this quarter.

**Planning & Economic Development Committee Chair Report**

Vice-Mayor Manheimer, Chair of the Planning & Economic Development Committee, provided Council with a brief update on some major accomplishments during this quarter.

**Public Safety Committee Chair Report**

Councilman Bothwell, Chair of the Public Safety Committee, provided Council with a brief update on some major accomplishments during this quarter.

**Strategic Operating Plan**

Assistant City Manager Jeff Richardson provided to Council a report which outlined key operational updates during July 1, 2011 – June 30, 2012. He then provided Council to speak about certain points in detail.

In addition, City Council has asked for an activity report on a quarterly basis of the Domestic Partner Registry. Since the Registry began on May 2, 2011, a total of 50 couples have registered.

Mr. Richardson responded to various questions from Council, some being, but are not limited to: the maintenance of the public restrooms at Pack Square Park, what has been the highest allocation to the Housing Trust Fund, what happens to the old ammunition, and are there are ideas to decrease tagging in West Asheville.

Police Chief William Anderson provided a brief update regarding the Police Department's on-going operational efforts and progress in the day to day management of the Evidence and Property Room. He said they are doing a nationwide search for a property manager and have reviewed 167 applicants for the position. He hopes to make a job offer soon with the goal of having that person in place by the end of September. Operationally, they are researching a ventilation system for that space and they are also working with the District Attorney's Office to research disposal of long-term bulky narcotics evidence.

**C. UPDATE ON TEMPORARY USE STANDARDS**

Assistant Planning & Development Director Shannon Tuch said that on January 10, 2012, the Asheville City Council considered several small amendments to the section of the *Unified Development Ordinance* (UDO) regulating temporary uses. Among those amendments considered and adopted, was a new standard that would allow fruit and vegetable stands to operate on institutional properties (i.e., churches and schools) located in residential districts – before that evening, no temporary use of any kind was permitted in residential districts.

During the hearing there was some discussion regarding a proposed standard that would limit the operation of these produce stands to hours that did not overlap with the main operating hours of the primary use. This standard was proposed in an effort to limit potential traffic congestion issues that may arise during the busiest times. This limitation concerned some because it appeared contrary to the goal of connecting the greatest number of people with the opportunity to access fresh food, and it was asked that the issue continue to be studied and examined and return in 6 months with an update.

To date, three (3) applications for fruit & vegetable markets in residential areas have been permitted and are in operation. These sites include:

Oakley Farmer's Market
Oakley United Methodist Church
607 Fairview Rd.

Grace Farmer's Market
Grace Baptist Church
718 Haywood Rd.

East Asheville Tailgate Market
Groce United Methodist Church
954 Tunnel Rd.

Staff has contacted the managers of all three markets to discuss specifically whether there was any interest in overlapping with the primary use's hours and whether they believed this to be beneficial or practical considering potential traffic issues. Additionally, staff also asked other general questions in an effort to determine whether there were other obstacles that should be considered. Two of the three managers did not express any interest in overlapping in hours of operation, primarily because they didn't believe it would work since their market covered the very large majority of the parking lots. One of the market managers, who also occupied the parking lot of the church property they occupied, expressed an interest in potentially collaborating with the church on a special event or function but not necessarily to operate the full market during the church service hours. This would suggest that there is little interest in the farm community to overlap with the primary use's hours; however, it should be noted that these managers operate larger tailgate style markets and there could be interest or value in having one or two vendors operate during peak church/school hours – or operate in areas that do not take up parking.

Other items of note:

- All three managers felt that the markets were going well and would likely return next year.
- All three managers felt that the patrons of the market travelled by both foot and car. Only the Oakley market felt that the majority of patrons travelled by foot, or were within walking distance of the market.
- One manager stated that they would like to see food trucks allowed to be permitted as part of the market so they could have ready-to-eat foods (food trucks are allowed in markets but not those that occupy residentially zoned property).
- One manager stated that they felt the permit fees were high (approximately $300) and would like to see the fees reconsidered.
- Surveying standards in other cities revealed that all of those surveyed did not allow temporary uses in residential districts (with some exceptions, such as fundraisers or charity events). However, in non-residential areas, there were no restrictions on hours of operation.

Analysis: Neighborhoods have benefited from the code change permitting fruit & vegetable stands in residential districts, allowing for the operation of several small, neighborhood-scaled tailgate markets. All three markets do not overlap in hours of operation with the primary use, and don't express interest in doing so except on occasion for special events (one manager). The lack of interest may be a result of the scale of the market where the managers recognize the inability to occupy the parking lots at the same time as the primary use. A smaller number of vendors may not have the same limitation. Recognizing this, it seems reasonable to allow fruit and vegetable markets to overlap in hours of operation with the primary uses provided parking requirements are maintained and traffic properly managed. Given the scale of these uses, it is expected that the vendors and property owners will self regulate and manage traffic and congestion so as not to be a detriment to each other.

Staff recommends that an update to the previous code amendment be considered removing the restriction on hours of operation, and provided that sufficient parking is left available and an undue traffic hazard is not created. That wording amendment will go through the Planning & Zoning Commission first before coming before City Council. It is also recommended that the question about food trucks in residentially zoned areas should be reviewed as part of the one-year food truck update, expected sometime this fall.

A related concern that was not part of the earlier amendment to temporary uses but has arisen in other contexts is the UDO's restriction to accessory structures in residential areas when no primary structure exists. In the interest of supporting the goal to improve access to locally grown produce, staff also recommends an amendment that would allow small, residential scale structures (greenhouses & storage sheds) to be permitted on vacant residential property when in conjunction with a private or community garden. This wording amendment will also go through the Planning & Zoning Commission prior to City Council. These structures should be limited in size and not include permanent foundations.

It was the consensus of Council to support a wording amendment (1) removing the restriction on hours of operation, provided that sufficient parking is left available and an undue traffic hazard is not created; and (2) amendment that would allow small, residential scale (greenhouses & storage sheds) to be permitted on vacant residential property when in conjunction with a private or community garden.

**D. WATER RESOURCES UPDATE**

Water Consolidation Project Manager Phil Kleisler said that from the August 14, 2012, City Council meeting the Water Resources Director provided updates on the Council action up to that point, key dates relating to MSD and City analysis, and the structure of the City's internal analysis teams.

City of Asheville workgroups consist of (1) MSD merger study relations; (2) governance models; (3) asset value/fair market compensation; (4) internal financial analysis; and (5) internal and external communications.

Internal financial analysis team: (1) project team to complete first phase of internal analysis in approximately two weeks; and (2) at October 16 City Council worksession there will be a presentation of analysis for three scenarios (a) Water Resources being absorbed by MSD; (b) MSD being absorbed by Water Resources; and (c) a functional collaboration between the City and MSD.

Regarding governance models, asset management (1) consideration of a contract for such services at this meeting; and (2) representative from Raftelis Financial Consultants will be available.

He said that an alternate date has been proposed for the joint City Council/legislators meeting. That date is September 18, 2012, at 1:00 p.m. in the U.S. Cellular Center Banquet Hall.

Regarding internal/external communications (1) management meeting with employees; (2) informational presentations to neighborhood groups; and (3) Project Webpage: www.ashevillenc.gov/projects.

Vice-Mayor Manheimer said that MSD designated Al Root to be the MSD/City liaison to comply with the negotiation element of the Legislative Study Committee report.

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF RECENTLY ANNEXED PROPERTY IN UNC-ASHEVILLE AREA TO INSTITUTIONAL DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT**

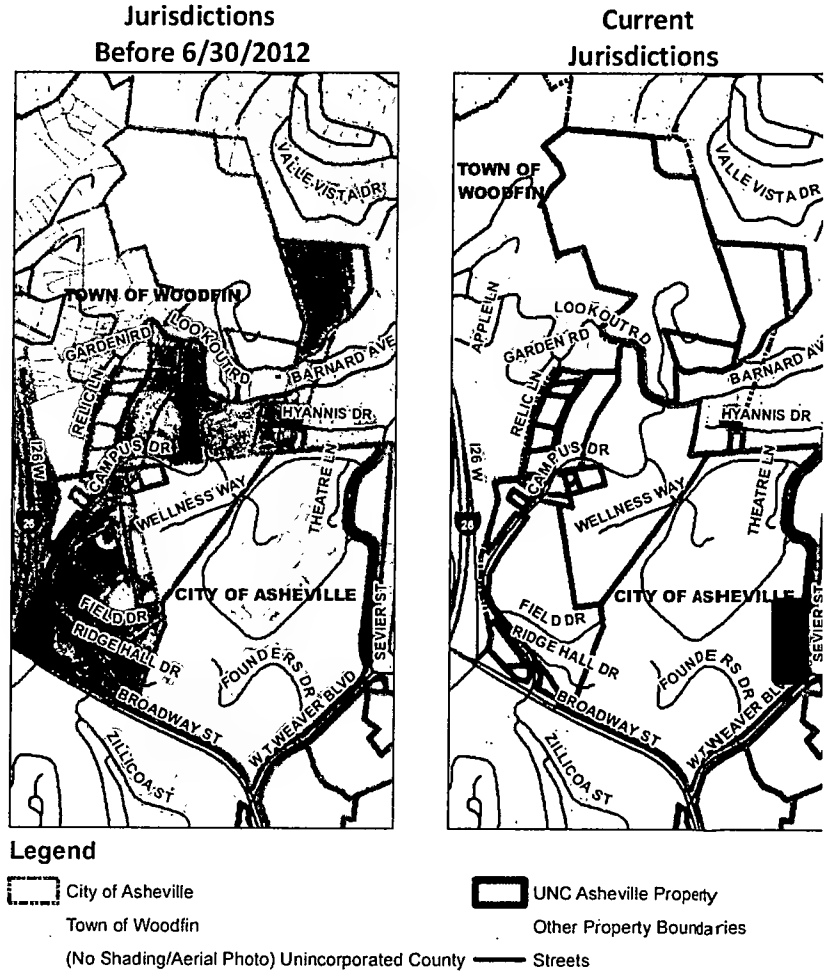
**ORDINANCE NO. 4111 - ORDINANCE TO INITIALLY ZONE RECENTLY ANNEXED PROPERTY IN UNC-ASHEVILLE AREA TO INSTITUTIONAL DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT**

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to initially zone recently annexed property in the UNC-Asheville Area to Institutional District and RS-4 Residential Single-Family Medium Density District. This public hearing was advertised on August 17 and 24, 2012.

Mr. Esselstyn said that as a result of NCGA Session Law 2012-119, roughly 119 acres of the UNC Asheville campus were brought into the City of Asheville jurisdiction effective June 30 of

this year. As a result the City is required to assign zoning districts to these areas. The maps on the following page show the jurisdiction changes, and the Exhibit A and B maps show the areas where an "initial zoning" will be required.

Just as the bulk of the University property that was already in the City's jurisdiction is under Institutional zoning, the staff proposal is for the bulk of the newly annexed University property to be zoned Institutional. The Unified Development Ordinance states that "The Institutional District is established to reserve land for the development of major educational facilities, major medical facilities and other complementary and supporting uses such as health related developments, office developments, and public services. Development standards for uses in this district are established to minimize conflict with adjacent land uses." This district represents the obvious choice for the contiguous campus parcels.




There are one and a half parcels, however, representing roughly half an acre, for which staff is recommending RS4 (Residential Single-Family Medium Density) zoning. These parcels, each with a building constructed as a residence, both front on Hyannis Drive. The portion of Hyannis Drive that had already been in City Limits has been zoned RS4 for 15 years, including half of one of the parcels under consideration for this initial zoning. The dominant use on the street is single-family residential, though there is a condominium development at the end of the street, in the Buncombe County jurisdiction. At one time, there was a day care business, but that appears to no longer be in operation. The University has owned the two properties on Hyannis since the mid-nineties, and has at times used the residential-style buildings for offices for faculty or for operations such as the Interfaith Campus Ministry.

While staff recognizes the University's interest in being able to use these properties for non-residential purposes, and also the University's past record of having been able to do so without disrupting the neighborhood, concerns remain that an (unconditional) INST zoning designation could lead to incompatible development there, especially if a third party were to acquire the property. Under the proposed RS4 zoning, continuation of existing non-residential uses, provided they did not switch to a higher impact, could be permitted as grandfathered "existing non-conformities."

Further, were these one and a half parcels to be zoned Institutional, staff feels that the isolated geometry could legitimately be challenged as spot zoning. Staff is of the opinion, however, that a conditional zoning would be appropriate for these parcels, and that such a petition from the University would be likely to receive staff support.

Also on the eastern edge of the subject area, but north of the Hyannis parcels, are two portions of parcels between Barnard Avenue and Valle Vista Drive. Portions of these parcels were already in the City Limits and were zoned RS4. The proposed initial zoning for the currently unzoned areas here is Institutional, which will result in a split-zoned situation for these two parcels. If the initial zoning is approved, however, staff intends to proceed with a rezoning of the RS4 slivers, which will rectify the split zoned situation. (The rezoning has to be undertaken separately from the initial zoning.)

The University has indicated acceptance of the staff recommendation. City staff, in communication with University staff, has indicated that small scale non-residential uses on Hyannis could likely be accommodated as existing non-conformities, or through conditional zoning, if necessary. In addition, in the future, if the University were to acquire a larger fraction of the properties on Hyannis with plans for expansion, staff would likely support a rezoning to Institutional.

At their August 1, 2012, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the initial zoning. One neighboring property owner spoke, and this citizen, along with staff and the commissioners, agreed that the proposed zoning would ensure greater scrutiny of future development compared to the previous situation.

As of this writing, staff has received 15 communications from neighboring property owners, all seeking additional information, with none expressing opposition to the proposed zoning.

Based on the above findings and the analysis provided in the report, staff finds this action to be reasonable and consistent with the Comprehensive Plan and other adopted plans.

Pro:

- Zones property in consideration of the surrounding zoning and land use and the City's Comprehensive Plan.

Con:

- Would create a split-zoned situation on two parcels (which staff intends to later rectify).

Staff recommends approval of the initial zoning.

Mayor Bellamy opened the public hearing at 6:39 p.m.

Mr. Alan Ditmore objected to the establishment of new single-family zoning as he felt it is a major cause of both homelessness and sprawl, in addition to burdening the school system.

Mayor Bellamy closed the public hearing at 6:42 p.m.

In response to Councilman Hunt, City Attorney Oast said that he didn't think that the inclusion of the property within the City's zoning jurisdiction makes it any more or less likely that the property will be developed than it was before.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4111. This motion was seconded by Councilman Davis and carried unanimously.

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## V. UNFINISHED BUSINESS:

### A. RESOLUTION NO. 12-203 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION

Vice-Mayor Manheimer said that the terms of Mark Brooks and Holly Shriner, as members on the Planning & Zoning Commission, expired on August 14, 2012.

On August 14, 2012, City Council instructed the City Clerk to arrange interviews for Mark Brooks, Holly Shriner, Abigail Emison and Joe Minicozzi.

After Council spoke highly of all the candidates, in particular current Chairman Mark Brooks, Mark Brooks received 3 votes, Holly Shriner received 4 votes, Abigail Emison received 2 votes and Joe Minicozzi received 5 votes. Therefore, Holly Shriner was reappointed and Joe Minicozzi was appointed as members of the Planning & Zoning Commission to each serve three-year terms respectively, terms to expire August 14, 2015, or until their successors have been appointed.

RESOLUTION BOOK NO. 35 – PAGE 74

### B. NC LEAGUE OF MUNICIPALITIES' LEGISLATIVE AGENDA

At the request of Mayor Bellamy, and after a short discussion, Councilman Hunt moved to ask the NC League of Municipalities to support a clarification of the intent of the indecent exposure bill, along with moped regulation. This motion was seconded by Councilman Davis.

Mr. Alan Ditmore was opposed to regulating mopeds.

Mr. Steve Rasmussen said if we outlaw toplessness, people will be looking for ways to protest, and secondly he felt it was a First Amendment issue.

Mr. Barry Summers agreed with Mr. Rasmussen and also felt that the topless rally attendance would be down from last year. He hated City Council, the League or the legislators wasting their time on an issue with such a low impact.

The motion made by Councilman Hunt and seconded by Councilman Davis carried on a 6-1 vote, with Councilman Bothwell voting "no."

**Closed Session**

At 7:10 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: The Institute of Southern Studies, Inc., d/b/a Carolina Public Press, Gannett Pacific Corporation, d/b/a Asheville Citizen-Times, Green Line Media, Inc., d/b/a Mountain Xpress, Western North Carolina Public Radio, Inc., d/b/a WCQS, and Sinclair Broadcast Group, Inc., d/b/a WLOS TV, the City of Asheville; and the Buncombe County District Attorney's Office. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3). This motion was seconded by Councilman Smith and carried unanimously.

At 7:50 p.m., Councilman Smith moved to recessed the closed motion to return to the formal meeting, noting that the closed session would continue at the end of the formal meeting. This motion was seconded by Councilman Bothwell and carried unanimously.

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 12-204 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE HOUSING AUTHORITY TO FUND AND CREATE A PUBLIC HOUSING POLICE UNIT**

**ORDINANCE NO. 4112 - BUDGET AMENDMENT TO FUND AND CREATE A PUBLIC HOUSING POLICE UNIT**

Police Chief William Anderson said that this is the consideration of a (1) resolution authorizing the City Manager to enter into an agreement with the Asheville Housing Authority to create a dedicated unit of sworn officers to provide direct law enforcement services to the 11 public housing communities in the City of Asheville; and (2) budget amendment in the amount of $217,000 from Housing Authority funds to add 4 full-time employees Patrol Officers.

The Asheville Housing Authority (AHA) currently hires public safety officers from both the City of Asheville and Buncombe County on a secondary employment basis. While this has been effective, a dedicated team of officers assigned to Asheville's public housing neighborhoods as their primary assignment should provide a more sustained and effective level of community safety to these neighborhoods through a variety of community policing techniques.

The Public Housing Unit would be responsible for criminal enforcement, crime prevention, community policing and enforcement of Housing Authority regulations in public housing. The unit would partner with the Housing Authority and its residents to foster an atmosphere focusing on community policing to create a safe environment and improve the quality of life in public housing, while simultaneously reducing crime. Preliminary discussions have occurred with Gene Bell, Chief Executive Officer of the Authority who is supportive of the concept.

General benchmark crime data suggests that all public housing neighborhoods combined have 24.3 per 1000 crime rate, whereas the entire City has a 5.1 per 1000, respectfully.

Over the first three years of implementation, the Police Department will track a number of performance metrics in an effort to improve the safety in these neighborhoods. These metrics include:

- Reducing crime in public housing neighborhoods by 10%.
- Reducing law enforcement calls for service by 5%.
- Increasing resident involvement and communication with APD by revitalizing resident associations and starting community watch groups in public housing.
- Partnering with public housing residents and community organizations to implement Police Activities League (PAL) activities for youth in public housing.
- Satisfaction survey of residents and Housing Authority Staff to measure effectiveness of new Public Housing Unit.

This action complies with the City Council Strategic Operating Plan in SAFE – Asheville will be one of the safest and most secure communities when compared to similar sized cities. The enhanced interactions and community policing activities in conjunction with the partnering with AHA will increase safety for the community and officers.

Pros:

- Establish a dedicated number of sworn officers to provide direct law enforcement services to the 11 public housing developments in the City of Asheville, which have a higher crime rate than other areas of Asheville.
- Foster an atmosphere focusing on community policing to create a safe environment and improve the quality of life in public housing.
- Improve lines of communication and cooperation between the residents, staff and the police in public housing.

Con:

- None identified.

A.) **COPS Grant Staffing**—On September 28, 2011, the City of Asheville was awarded a COPS Hiring Program Grant to fund the addition of five full-time officers. The grant covers the cost of salaries and benefits for a period of three years. The City is responsible for funding the cost of uniforms and equipment for these officers at an annual cost of $27,600 which is included in the FY 13 budget. At the beginning of the fourth year, the City's General Fund will be responsible for funding the full cost of salary and benefits. The revenue and expenses associated with this grant are already included in the FY 13 budget. It is staff's recommendation that these five positions be assigned to the proposed Public Housing Unit.

B.) **APD Staff Reassignment**—In addition to the five grant-funded positions, staff recommends reassigning an existing full-time employee from the Patrol Division to supervise this unit. The estimated cost of this position is already included in the FY 13 budget.

C.) **Housing Authority Contribution**—Staff anticipates the Housing Authority will fund an additional four full-time officers for the unit at an estimated cost of $217,000, bringing the total staffing of the unit to ten full-time officers

Public Housing Unit Staffing Plan

| Staffing Costs | Amount | Revenue Source | Included in FY13 Budget |
|---|---|---|---|
| 5 FTE Officers | $237,086 | COPS Hiring Grant (Years 1-3) | Yes |
| 1 FTE Unit Supervisor | $69,000 | General Fund | Yes |
| Uniform and Equipment (1 year) | $27, 600 | General Fund | Yes |
| 4 FTE Patrol Officers | $217, 000 | Housing Authority | No- Budget Amendment Needed |

Staff recommends that City Council approve a (1) resolution entering into an agreement with the Asheville Housing Authority to fund and create a public housing policing unit; and (2) a budget amendment in the amount of $217,000 from Housing Authority funds to add 4 FTE Patrol Officers.

Mayor Bellamy supported this initiative and felt that past performance in this type of initiative has been successful in different areas; however, looking at the Weed & Seed model that had 5 years of success, she felt we may be missing an opportunity to include some of the "seeding" portion back into the program. What made the Weed & Seed program so successful was there was one coordinator making sure residents were meeting, access to services, and

letting the residents know they are just as equal as the police officers in helping solve crimes and address issues in their community. She felt there should be one person dedicated to this process to move it forward. She felt some of the successes of the Weed & Seed program be included in this process so we can see some sustainability. She also asked that during this 3-year process that we get a continuation plan to sustainably address some of these issues that continually pop up.

In response to Councilman Davis, Mr. David Nash, Deputy Executive Director of the Housing Authority, said that the $217,000 is the money they spend for security. He used a graph showing crime rates in the public housing units, noting that this is the reason for an increased , police security presence and community policing presence in our communities. They are contributing funds because they want an increased community policing presence in their neighborhoods so they will be safer.

Mr. Gene Bell, Executive Director of the Housing Authority, said they do not want to lose the momentum of the Weed & Seed program. Their objective is clearly to improve neighborhoods, not to put people in jail.

Ms. Dawa Hitch, Community Relations Division Head and Public Information Officer, reinforced the commitment to this relationship between police community relations and the Housing Authority. Although the Weed & Seed position is no longer funded, the philosophy behind it still exists and they are looking at addressing that through resources that we currently have.

In response to Mayor Bellamy, Ms. Hitch said that she would have an update to Council in a 4-6 week timeframe.

Mr. Alan Ditmore felt the job of the Housing Authority is to provide housing and the City should be seeking grants to fight the drug war.

Mr. Fred English felt the Asheville Police Department is sufficient to police public housing communities.

Ms. Judy Strong said that we already subsidize the rent and maintenance of homes through various agencies to those identified as needing public assistance. She wondered at what point will accountability be asked of those residents.

Mr. Bell explained how they do hold criminals accountable, including the ones who may happen to be their residents.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 12-204. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 75**

Vice-Mayor Manheimer moved for the adoption of Ordinance No. 4112. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 447**

**B. RESOLUTION NO. 12-205 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH PROPERTY OWNERS ALONG BLAIR STREET TO CONSTRUCT A NEW STORM DRAINAGE PIPE**

**ALONG BLAIR STREET TO REPLACE A FAILING STORM DRAINAGE PIPE ON PRIVATE PROPERTY**

**ORDINANCE NO. 4113 - BUDGET AMENDMENT FOR THE BLAIR STREET NEW STORM DRAINAGE PIPE**

Stormwater Services Manager McCray Coates said that this is the consideration of (1) a resolution authorizing the City Manager to execute an Agreement with property owners along Blair Street to construct a new storm drainage pipe along Blair Street, which will new pipe will replace a failing storm drainage pipe located on private property; and (2) a budget amendment for the project in the amount of $155,720.

On April 17, 2012, a private storm drainage pipe collapsed under the home located at 17 Blair Street causing significant structural failure to the home. The home was declared un-inhabitable. Continued rain events expanded the void under the home and jeopardize the remaining properties. Further, the commercial structure located at 171 Charlotte Street has received significant flood damage as a result of the pipe failure in a separate location further downstream. The existing pipe appears to have been installed in the early 1900's and is made of terra cotta.

Since inception, City staff has diligently worked with the affected property owners, being: 36 Albermarle Place; 15 Blair Street; 17 Blair Street and 171 Charlotte Street to address this private nuisance, jeopardizing not only property but life as well.

Staff recommends that a new pipe be installed along the publicly maintained Blair Street. Once installed, the stormwater currently flowing into the failed storm drainage pipe will then flow into the new pipe.

The engineers estimate for the project, including a 5% contingency, is $155,720. The linear footage of pipe to be installed is 359 feet. Staff is proposing to cost share with the private property owners in a 75/25 split, with the City paying 75% of the cost. Staff originally considered a 50/50 cost share but reevaluated the split due to the cost the property owners will incur to abandon the failing pipe under their respective structures. There is currently no estimate for these costs, but the costs are expected to be significant.

Staff proposes that the cost be distributed based on linear footage of property owned by each property as is consistent with a statutory Special Assessment. The estimated cost for each property is displayed in the table below. The property owners will pay their portion of the actual cost but no more than the costs shown below. The City's cost of the project is estimated at $123,079

| Property | Linear Foot | Cost per LF (25%) | Total Cost |
|---|---|---|---|
| 171 Charlotte Street | 158 | $108.44 | $17,134 |
| 15 Blair Street | 46 | $108.44 | $4,988 |
| 17 Blair Street | 49 | $108.44 | $5,314 |
| 36 Albermarle Place | 48 | $108.44 | $5,205 |

The public purpose of the project is to eliminate standing water from flash flooding on Charlotte Street and protect life and property, as there exist more than the possibility that Albemarle Place will collapse if the existing pipe is not repaired/replaced.

This action meets Council goals by enhancing the City's long-term financial commitment to infrastructure maintenance and capital improvements. Additionally, this project leverages internal and external partnerships for pursuing capital improvements and infrastructure projects.

Pro:

- If this recommendation is approved, staff would be able to move quickly on the constructing the new pipe, minimizing future damage to property.

Con:

- The City Stormwater Utility is paying a large portion of the cost of the project.

This engineer's estimate for the project with a 5% contingency is $155,720. Twenty-five percent (25%) of the cost of the project, or $32,641, will be paid by the four private property owners. The remaining $123,079 will be funded from Stormwater Utility Enterprise Fund fund balance reserves. Based on the City's fund balance policy, the Stormwater Fund should maintain reserves equal to 8% of the operating budget. After the appropriation for this project, staff estimates that the Stormwater Fund's fund balance will exceed the 8% target amount by $750,000. The project will be completed by City crews.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to execute an Agreement with property owners along Blair Street to construct a new storm drainage pipe along Blair Street to replace a failing storm drainage pipe on private property with a 75%/25% city/private cost share; and (2) a budget amendment for the project in the amount of $155,720.

The property owner of 17 Blair Street showed pictures to Council of the gravity of the storm drainage pipe collapse underneath her home. She explained the extensive work necessary on her home to make it livable again. She urged Council to accept the 75/25 agreement in addition to asking Council to consider waiving future permitting and dump fees associated with the demolition and reconstruction of the residences.

The following property owners urged Council to pay 100% of the costs in addition to waiving the permitting and dump fees:

Property owner of 36 Albemarle Road
Property owner of the house at the bottom of the hill
Property owner of 15 Blair Street

In response to Vice-Mayor Manheimer, Mr. Coates explained the cost sharing with the property owners. City Manager Jackson also noted that we are trying to get to a point (in consultation with Risk Management) that as other private lines fail, we will look at them on a case by case basis.

Ms. Tressa Hayes, from the City's Risk Management Division, responded to Councilman Pelly regarding homeowner insurance.

City Attorney Oast said that he would report back to Council on the costs associated with waiving future permitting and dump fees associated with the reconstruction of the homes.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 12-205. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 76**

Vice-Mayor Manheimer moved for the adoption of Ordinance No. 4113. This motion was seconded by Councilman Bothwell and carried unanimously.

ORDINANCE BOOK NO. 27 – PAGE 449

C. **RESOLUTION NO. 12-206 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MANAGEMENT AGREEMENT WITH POPE GOLF LLC FOR THE OPERATION OF THE ASHEVILLE MUNICIPAL GOLF COURSE**

Director of Parks, Recreation and Cultural Arts Roderick Simmons said that this is the consideration of a resolution authorizing the City Manager to enter into a seven (7)-year management agreement with Pope Golf, L.L.C. for the operation of the Asheville Municipal Golf Course.

In January 2012, the City Council Finance Committee supported a staff recommendation to issue a Request for Proposals (RFP) for management of the Asheville Municipal Golf Course, and to bring back a recommendation on the best management options for the City.

Staff issued the RFP in March 2012 which was advertised locally, state-wide and nationally. In addition, it was posted on the City website and social media tools including Facebook and Twitter. Staff also conducted several community meetings with stakeholder groups and individuals to inform them about the process and get feedback.

A total of eight (8) firms responded to the RFP. Those responses were reviewed by three committees. One was composed of citizens and stakeholders participating in the Muni Alliance and the other two were composed of City staff. Each of these committees ranked the proposals and made recommendations to the final review team.

The final review team, consisting of staff and community volunteers, reviewed the recommendation and narrowed the proposals down to two (2) finalists. The two (2) finalists were invited to Asheville to discuss their proposals with the final review team.

The final review team met on July 19, 2012, to develop a recommendation on the type of management plan to recommend to the Finance Committee. The final review committee selected Pope Golf as the firm with the strongest proposal for management of the Municipal Golf Course.

The Pope Golf proposal presented to the City outlines a contract agreement to create a Public/Private Partnership. This provides several advantages to the City:

1. **Elimination of financial risk for the City:** The contractor will be committed to pay the municipality a performance payment, pay all operating expenses, supply equipment, and likely provide some capital funds for investment in the golf facility. The City is guaranteed positive income from performance payments.

2. **Protection of and accessibility of the asset:** While contractual arrangements are typically associated with less municipal control over golf course operations, staff is confident the City can protect the quality of and accessibility to the asset by carefully developing an agreement with clear operational and maintenance standards, as well as performance measures and provisions that address pricing, programming, capital improvements and service.

The Pope Golf proposal addresses the following items that were major concerns of community members:

**Q: Will the City lose control of the rate structure?**

*A: No. The City will include language in the contract to retain control of the maximum rates charged for all goods and services. Pope Golf seeks only the ability to offer discounts to*

*customers to increase volume at off peak times. Pope has agreed not to increase rates during the first two years of the contract. Thereafter, rates may not increase more than the CPI for the southeast region.*

**Q: Will current tournaments continue to operate at the golf course?**

*A: Yes. Pope Golf will continue to allow current tournaments that have a 10+ year history to operate at the golf course. The dates and times will be protected.*

**Q: Will the public have access to the golf course?**

*A: Yes. The course will remain open to the public. It will not be a private course. It will continue to be a City asset and open to all citizens who want to participate.*

**Q: Will current employees be retained?**

*A: Under a contract arrangement, all golf course employees will be employed by the management company. Pope Golf understands the importance of local jobs and the relationship between current employees and the customer base, and recognizes that dedicated, quality employees are a valued asset. Pope has retained over 95% of all employees wishing to continue employment at the facilities Pope Golf manages. Pope is committed to interviewing all employees currently employed at the golf course.*

**Q: How will the City ensure that the golf course stays in good shape?**

*A: Specific course maintenance standards negotiated and agreed upon becomes part of the management contract. Pope Golf will provide management and maintenance programs to ensure that these standards are exceeded. It is in the City's and Pope Golf's mutual best interest to provide top quality playing conditions to increase rounds and revenue. The aforementioned efficiencies typically allow Pope Golf to increase expenditures on the golf course.*

**Q: How can the City provide for much needed capital investment to enhance and protect the course?**

*A: Pope Golf is committed to comprehensive capital expenditure programs to protect assets, and make continued improvements to increase revenues, customer satisfaction, and the asset value. During contract negotiations, an agreed upon percentage of revenues will be set aside to fund capital improvements.*

**Q: What is Pope Golf's position on junior golf and community programs?**

*A: Pope Golf will develop and support programs for juniors, families, women, seniors and individuals with special needs, which will increase playing opportunities to build a foundation for the future of the game.*

City Council Finance committee reviewed the management terms on July 24, 2012, and recommended this item to the full City Council. The Recreation Advisory Board reviewed the management recommendation and terms of the agreement at its meeting on August 13, 2012.

The proposed timeline is as follows, if Council approves the management agreement at this meeting: (1) the City will meet with golf course employees tomorrow and share with them Pope Golf's benefits and their operating; (2) on September 17 Pope will conduct on-site interviews with staff, working with our Human Resources Department; (3) on September 24 Pope

Golf will make job offers to employees; (4) on September 25 City Council to approve lease agreement; and (5) on October 1 Pope Golf will be ready to start operations.

This action complies with the City Council Strategic Operating Plan of Fiscal Responsibility in that it supports a stronger, more prosperous community by making smart investments that accomplish lasting, tangible returns. It leverages an external partnership to enhance the City's financial commitment to master plan implementation, infrastructure maintenance, capital improvements and public facilities. This action also complies with the Parks, Recreation, Cultural Arts and Greenway Master Plan in that it maximizes the level of service available to the community by using partnerships.

Pros:

- Eliminate the general fund subsidy for golf course operations.
- Elimination of financial risk for the City.
- Provide a reliable funding stream to support maintenance and operation of the Municipal Golf Course.
- Sets the standards of operation to assure quality maintenance practices and meet community expectations.

Con:

- None

Through the RFP process, staff concluded a public-private partnership offers the best opportunity for the City to maximize financial performance at the golf course while improving the asset and continuing to offer an affordable public recreational amenity. Staff further concluded a private company was in the best position to maximize financial performance by:

- Increasing the number of rounds played;
- Cutting overhead costs, particularly related to the costs of benefits;
- Purchasing materials and supplies in volume;
- Improving golf-course management techniques;
- Improving course conditions;
- Actively marketing programs and cooperative arrangements with golf associations;
- Reaching out to local high schools, youth groups, and community groups;
- Reinvesting revenues in capital improvements; and
- Increasing productivity by applying industry best practices and efficiency.

While the City could independently pursue some of these strategies, it is limited in some key areas including staffing costs and the economies of scale achieved by management companies that operate multiple facilities.

Over the last six (6) years, staff has worked to identify creative ways to reduce operating expenses at the golf course. As a result, the operating budget was reduced by almost $200,000 by eliminating personnel, supplies and materials; and by re-negotiating lease payments for golf carts and equipment. These strategies have helped to limit the expense budget, but the downturn in the economy has affected the annual number of rounds played, which impacts revenue projections. The effect of not achieving the projected number of rounds per year is an increase in the general fund subsidy to cover the loss of projected revenue.

Under this partnership model, the operational risk is shifted away from the City and to the contractor. This includes the risk associated with rising expenses, as well as downturns in rounds played and revenues. The only expenses remaining with the City will be those associated with administering the contract, oversight and compliance, along with the long-term capital needs of the asset.

In the six (6) years of operating the Municipal Golf Course, the City has not invested in much needed capital projects. This is due to the ongoing subsidy of the operating losses each year. There have been two (2) capital projects completed during this time period, (1) netting along Swannanoa River Road to prevent golf balls from damaging vehicles, and (2) the irrigation system on the front nine. The fence along Swannanoa River Road was replaced via a project funded by PSNC Energy to relocate the fence away from an underground gas line.

The City and Pope Golf will develop a separate Memorandum of Understanding (MOU) for the following areas:

a. **Capital Improvement Agreement** – The Capital Improvement Agreement will include specific projects to be implemented over a seven (7)-year period. This will be developed by the management company and approved by the City no later than six (6) months after the contact is approved by both parties.

b. **Capital Funding Schedule-** The City and Pope Golf will agree on a seven (7)-year Capital Funding Schedule for the Capital Improvement Agreement no later than six (6) months after the contract is approved by both parties.

The City currently budgets the golf course annual operating expenditure at $924,554. If City Council approves this agreement, Pope Golf will assume this expenditure and provide the daily operations and maintenance of the facility. Operational standards will be defined with a stated mission statement, hours and days of operation, and an addendum that specifies agronomic condition standards and other operational expectations.

Part of the structure of this management agreement will be to lease the municipal golf course property to Pope Golf. As consideration for the lease agreement, Pope Golf will make an annual contract payment to the City. For the first three years of the contract, Pope will pay the City a flat fee of $72,000. After the initial three years, the flat fee will be calculated as 10% of the average gross revenues earned during the first three years of the contract (minus golf shop and food and beverage sales). Pope Golf will pay the City an additional 1% if annual gross revenues (minus golf shop and food and beverage sales) are $1,200,000 or less than $2,199,999. Pope Golf will pay the City an additional 2% if annual revenues (minus golf shop and food and beverage sales) are $2,200,000 or greater. Payments will be due quarterly. The lease term would be for a period of seven (7) years with an option to renew one (1) three year period. The request to authorize the lease will be brought to City Council at its regularly scheduled meeting on September 25, 2012.

If Council authorizes Pope Golf to operate the golf course under a management agreement, the City will implement a Reduction in Force in accordance with the City's Personnel Policy Section 35. The reduction in force will eliminate ten (10) full-time positions allocated to the Golf Course effective October 1, 2012. The City requests the authorization to offer a severance package to impacted employees who do not obtain employment in either another City position and/or a position with Pope Golf. The request is to provide a lump sum payment equivalent to eight (8) weeks of pay for those employees. In the unlikely event that none of the impacted employees obtain employment with either the City or Pope, the maximum amount that the City would pay out under this reduction in force agreement (including vacation and compensatory time payouts) would be approximately $92,000. This payment would come from the existing FY 2012-13 Golf Fund budget.

Staff recommends City Council (1) adopt a resolution authorizing the City Manager to enter into a seven (7)-year management agreement with Pope Golf, L.L.C to manage the operation of the Asheville Municipal Golf Course; (2) authorize staff to offer a severance package to impacted employees who do not obtain employment in either another City position and/or a position with Pope Golf. The request is to provide a lump sum payment equivalent to eight (8)

weeks of pay for those employees; and (3) authorize the lease to be brought before City Council at its September 25, 2012, meeting.

Mr. Alan Ditmore felt that golf is not in the preview of government and the City should not be involved in something that is obviously suitable for private enterprise.

The following individuals spoke in opposition to the public-private partnership of the Municipal Golf Course and in support of the City properly maintaining management the course with professional leadership:

Golfer at the Municipal Golf Course since 1969 and current President of the Men's Club
Golfer and former Golf Course employee at the Municipal Golf Course since 1945
(presented Council with a petition to reject the outsourcing of the Municipal Golf Course and noted they only met with a few people who played golf)

The following individuals spoke in support of the public-private partnership of the Municipal Golf Course, noting that the City has met with numerous groups on this issue:

Mr. Robert Green, member of the Muni Alliance Citizens Group
Ms. Brenda Dunlap, member of the Muni Alliance Citizens Group

Councilman Smith noted that the land which is golf course is located on is deed restricted to the purpose of a golf course only and it's the responsibility of the City to make sure that it's a good golf course.

In response to Councilman Smith, Director of Finance and Management Services Lauren Bradley said that Pope Golf will probably utilize more temporary seasonal labor positions; however, they have agreed to comply with the City's living wage policy for the employees that they would have as Pope Golf full-time and part-time employees.

In response to Councilman Hunt, Ms. Bradley said that the Capital Improvement Agreement would outline the responsibilities of both the City and Pope Golf. The City would maintain some responsibility for capital improvements and that responsibility would be for those that would not be related to the course of operating a business there, but those that were more related to the long-term life of the asset.

Councilmen Bothwell, Hunt and Pelly all agreed that at the beginning of the process they felt the City should manage the asset of the Golf Course in-house; however, they now believe that the Golf Course can be better managed by Pope Golf.

In response to Mayor Bellamy, Ms. Bradley explained the 7-year management agreement by saying that Pope Golf's proforma showed a better window of time to recoup their investment, opposed to a five-year period (with a 2-year extension) that the City originally proposed.

In response to Mayor Bellamy regarding the termination language, Ms. Bradley said there will be several performance clauses and addendums to the lease and among those will be very specific maintenance standards. Also there will be customer service standards and if those measures are not met it could be a reason for termination. She said Pope Golf will operate concessions and food service at the Golf Course and there will be expectations built in for what the City's expectations are for provision of those types of services. Pope Golf has agreed to purchase any inventory that we have on hand in the Pro Shop.

In response to Mayor Bellamy about the generous volunteer program we now have, Ms. Bradley said that the standard in the industry is to not have a volunteer program because data shows that you lose money on providing free golf vs. the value of the labor that you are getting in return.

When Mayor Bellamy asked about the Golf Course budget, Ms. Bradley said that we budgeted $924,000 in expenses, about $700,000 in revenue and about $140,000 in the General Fund operating subsidy. What we would be left with the $140,000 General Fund subsidy, plus the $70,000 lease payment. However, in Year One we will have the expense of the severance package for employees and thought Council might want to apply that General Fund subsidy toward any type of pay-out for that.

Mayor Bellamy felt it was clear by the number of people who signed the petition that we need to have at least one more meeting (before September 25) with the community to talk about the specifics of what will happen, specifically mentioning that the property is deed restricted for a golf course only. It's clear that some people feel disenfranchised in this process.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Manheimer moved for the adoption of Resolution No. 12-206. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 77**

**D. RESOLUTION NO. 12-207 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH THE GROVE ARCADE PUBLIC MARKET FOUNDATION INC. FOR A DOWNTOWN ENGAGEMENT SITE FOR THE RENAISSANCE COMPUTING INSTITUTE OF UNC-ASHEVILLE (RENCI)**

**ORDINANCE NO. 4114 - BUDGET AMENDMENT FOR THE LEASE AGREEMENT WITH GROVE ARCADE PUBLIC MARKET FOUNDATION INC. FOR ONE PAGE AVENUE, SUITE 116 IN THE GROVE ARCADE BUILDING**

Real Estate Manager Nikki Reid said that this is the consideration of a resolution authorizing the City Manager to execute a Lease Agreement between the Grove Arcade Public Market Foundation, Inc. and the City of Asheville for real property located at One Page Avenue, Suite 116, Asheville NC within the historic Grove Arcade building; and the associated budget amendment in the amount of $36,096 with funding provided by the Renaissance Computing Institute at UNC Asheville (RENCI).

Since June 2009, the City of Asheville has leased Suite 116 at the Grove Arcade from the Grove Arcade Public Market Foundation, Inc. This space, measuring approx. 2,209 square feet, is utilized by the Renaissance Computing Institute at UNC Asheville (RENCI) for a Downtown Engagement Site. At this time, the existing lease has expired and the City has the opportunity to re-establish the lease based on the following terms:

- Initial term of 2 years with the option to renew for an additional 2 year period
- Proposed monthly rental rate of $3,007.40, with no annual increase
- All maintenance and care of premises is the responsibility of the Grove Arcade
- All utilities are separately metered and are the sole responsibility of RENCI

RENCI will fully reimburse the lease cost to the City throughout the duration of the lease and will be responsible for any and all costs related to the occupancy and operation of the Downtown Engagement Site, including utilities. The budget amendment in the amount of $36,096 includes rental payments for year one of the proposed lease.

This action complies with the City Council Strategic Operating Plan by supporting an ongoing collaborative partnership between the City of Asheville and RENCI at UNC Asheville.

Pros:

- Optimum location for Downtown Engagement Site
- Supports RENCI at UNC Asheville partnership
- All rent payments are fully reimbursed by RENCI

Con:

- None

There is no financial impact to the City. RENCI will reimburse the City for the full cost of the lease.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute the lease agreement with the Grove Arcade Public Market Foundation, Inc. on behalf of the City of Asheville, and the associated budget amendment in the amount of $36,096 for year one of the lease.

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilman Smith moved for the adoption of Resolution No. 12-207. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 78**

Councilman Smith moved for the adoption of Ordinance No. 4114. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 451**

**E. RESOLUTION NO. 12-208 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SUBLEASE WITH THE STATE OF NORTH CAROLINA FOR A DOWNTOWN ENGAGEMENT SITE FOR THE RENAISSANCE COMPUTING INSTITUTE AT UNC-ASHEVILLE**

Real Estate Manager Nikki Reid said that this is the consideration of a resolution authorizing the City Manager to execute a Sublease Agreement between the City of Asheville and the State of North Carolina for real property located at One Page Avenue, Suite 116, Asheville NC within the historic Grove Arcade building for the Renaissance Computing Institute at UNC Asheville (RENCI).

On June 1, 2009, the City of Asheville entered into a lease with the Grove Arcade Public Market Foundation, Inc. for office space in Suite 116 at the Grove Arcade. As part of the partnership outlined in the Memorandum of Understanding between the City of Asheville and the UNC Asheville, this space is utilized by the Renaissance Computing Institute at UNC Asheville (RENCI) for a Downtown Engagement Site. On behalf of UNC Asheville - RENCI, the State of North Carolina entered into formal sublease with the City for the premises and covered all costs associated with the occupancy of the leased space.

At this time, the master lease between the Grove Arcade Public Market Foundation, Inc. and the City of Asheville has expired and the City seeks to re-establish the lease based on the following terms:

- Initial term of 2 years with the option to renew for an additional 2 year period
- Proposed monthly rental rate of $3,007.40, with no annual increase
- All maintenance and care of premises is the responsibility of the Grove Arcade
- All utilities are separately metered and are the sole responsibility of RENCI

The State of North Carolina has requested a formal sublease between the City and the State, under the same terms and conditions as set forth in the master lease. The State of NC will be responsible for costs related to the occupancy, including rental at a rate of $3,007.40 per month, utilities, and janitorial services.

This action complies with the City Council Strategic Operating Plan by supporting an ongoing collaborative partnership between the City of Asheville and the RENCI at UNC Asheville.

Pros:

- Optimum location for Downtown Engagement Site
- Supports RENCI at UNC Asheville partnership
- All rent payment, utilities and janitorial costs are fully paid by the State of NC - RENCI

Con:

- None.

There is no immediate financial impact to the City. The State of NC (RENCI) will continue to reimburse the City for the full cost of the rental.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute the sublease agreement with the State of North Carolina for Suite 116 at the Grove Arcade.

When Mayor Bellamy asked for public comment, no one spoke.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 12-208. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 79**

**F. ORDINANCE NO. 4115 - ORDINANCE REPEALING ORDINANCE NO. 1876 CREATING THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION**

Planning & Development Director Judy Daniel said that this is the consideration of an ordinance to eliminate the Asheville Buncombe Fair Housing Commission.

When the Asheville Buncombe Community Relations Committee was certified by HUD to investigate federal fair housing complaints, an Asheville Buncombe Fair Housing Commission was established by joint ordinance of the City and Buncombe County. The sole purpose of this Commission was to act as the adjudicating body if complaints with merit could not be resolved voluntarily or through mediation. In 2011, HUD decertified the Asheville Buncombe Fair Housing Program as being substantially equivalent to the Federal Fair Housing Program, and the City agreed that fair housing investigations would be conducted by the North Carolina Human Relations Commission. The County agreed likewise. The local Commission therefore no longer has authority to hear fair housing cases.

This action supports the City's Strategic Operating Goal of *Affordable* by supporting citizen access to safe, sufficient and affordable housing by ensuring that all residents have access to fair housing services that are HUD certified.

This recommendation has been reviewed and is supported by the Housing and Community Development Committee.

Pros:

- This ordinance will eliminate any confusion regarding jurisdiction in fair housing cases.
- Fair Housing cases needing adjudication will be addressed by a HUD certified body.

Con:

- There has been some concern expressed about the loss of local fair housing investigation capacity. Staff continues to work with both the ABCRC and NCHRC to ensure proper attention to fair housing issues in our community.

No City funds are requested to support this program.

Staff recommends that Council approve the ordinance eliminating the Asheville Buncombe Fair Housing Commission.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Bothwell moved for the adoption of Ordinance No. 4115. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 453**

**G. RESOLUTION NO. 12-209 - RESOLUTION AUTHORIZING THE CITY MANAGER EXECUTE A CONTRACT WITH RAFTELIS FINANCIAL CONSULTANTS INC. FOR ADDITIONAL SERVICES – WATER UTILITIES MERGER/CONSOLIDATION ANALYSIS**

**ORDINANCE NO. 4116 - BUDGET AMENDMENT FOR RAFTELIS FINANCIAL CONSULTANTS INC. FOR ADDITIONAL SERVICES – WATER UTILITIES MERGER/CONSOLIDATION ANALYSIS**

Director of Water Resources Steve Shoaf said that based on the July 31st City Council work session, Raftelis Financial Consultants, Inc., has submitted a scope of work and cost estimate for additional services to assist the City of Asheville in performance of an analysis of the parameters and impacts of various merger/consolidation scenarios. The City Manager is authorized by council to enter into general service contracts between $30,000 and less than $90,000 without council approval. However, Staff recommends that the City Council give approval to the City Manager to enter into a contract with Raftelis to provide additional expertise to City staff during the internal impact analysis; and the consideration of a budget amendment in the amount of $67,200.00 from savings in capital projects that were completed under budget.

The City of Asheville previously engaged the services of Raftelis Financial Consultants to assist with the City's response to requirements of the legislative study report related to the merger / consolidation of the water system with MSD. Specifically, the City is interacting with MSD as MSD pursues a study of the impacts of merger / consolidation on MSD rate payers. The City of

Asheville staff, as due diligence, is now conducting an analysis of the impacts of various scenarios related to a potential merger/consolidation of the water system with one or more entities. This impact analysis includes a review of financial information, a review and fair market valuation of assets associated with the water system operation, and a review of governance options.

Raftelis has identified two separate scopes of work associated with the due diligence process:

- Task 1 is provision of Financial Analysis and Support. This includes meeting with City staff, updating the water rate model, providing guidance on asset valuation methods, reviewing the City analysis results, and presentations of results to the Council and other stakeholders.
- Task 2 is provision of Governance Analysis of Regional Approaches to Utilities. This includes meeting with City staff, research and analysis of successful North Carolina governance structures of regional utility organizations, development of governing body criteria associated with successful North Carolina regional utility organizations, and development of findings and recommendations with presentations of results to the Council and other stakeholders.

Cost estimates by Raftelis are $35,270.00 for *Task 1: Financial Analysis and Support* and $24,593.00 for *Task 2: Governance Analysis of Regional Approaches to Utilities* for a proposed total of $59,863.00. A 12% contingency will be added for a total budget amount of $67,200.00.

The Water Resources Department will develop a contract between the City and Raftelis Financial Consultants, Inc., to cover the proposed work and for the amounts estimated.

Pros:

- Raftelis has experience reviewing financial and governance models.
- Raftelis will provide guidance related to recognized methodologies for asset valuation.
- Raftelis will be able to provide benchmarking to recognized practices related to merger / consolidation of utility organizations.

Con:

- The services provided by Raftelis were not part of the approved Water Operating budget and require the use of capital project savings.

The Water Resources Department has not budgeted for this project. The $67,200.00 for this one-time expense will come from unexpended capital funds that have accumulated in the Water Capital Projects Fund as projects have been completed and come in under budget. In order to use these funds, a budget amendment is necessary.

| | |
|---|---|
| Current Amount Budgeted for RFC Contract | $ 0.00 |
| Budget Amendment Amount Needed | $67,200.00 |
| Total Amount | $67,200.00 |

The City Manager is authorized by council to enter into general service contracts between $30,000 and less than $90,000 without council approval. However, Staff recommends that the City Council give approval to the City Manager to enter into a contract with Raftelis to provide additional expertise to City staff during the internal impact analysis; and the consideration of a budget amendment in the amount of $67,200.00 from savings in capital projects that were completed under budget.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 12-209. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 80**

Councilman Bothwell moved for the adoption of Ordinance No. 4116. This motion was seconded by Councilman Pelly and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 454**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Ms. Teddy Jordan, President of the Kenilworth Residents Association, Inc., said that they are concerned about the steep slopes, unstable soil conditions and limited sight distances in roadways and on old driveways south of and to the east of the Kenilworth Inn Apartments. She provided Council with a map of the requested area. They understand that a new application has been recently filed for the portion of the area but they have not seen the plans. Therefore, they request City Council immediately initiate rezoning on any property that is owned by Caledonia LLC zoned Institutional in this area that is not associated with a current pending project or an existing building and if any opportunity presents itself in this process to also include the Finalee property, we request that as well. It was the consensus of Council to place this request on an upcoming City Council agenda.

**Continuance of Closed Session**

It was the consensus of Council to go into closed session and then come back out into the formal meeting to continue the formal meeting until Thursday, August 30, 2012, at 4:00 p.m. in the Council Chamber for consideration of revisions to the language of the referendum on the sale or lease of the City's water system.

At 10:45 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

**Continuance of Formal Meeting**

It was the consensus of Council to continue this formal meeting until Thursday, August 30, 2012, at 4:00 p.m. in the Council Chamber for consideration of revisions to the language of the referendum on the sale or lease of the City's water system.

Thursday – August 30, 2012 - 4:00 p.m.

Continuance of Regular Meeting of August 28, 2012

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Deputy City Clerk Philip Kleisler

Absent: None

**Consideration of revisions to the language of the referendum on the sale or lease of the City's water system**

At 4:00 p.m., Councilman Pelly moved to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege

between the City and its attorney must be preserved. The statutory authorization is contained in G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Davis and carried unanimously.

At 4:29 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

After hearing from City Attorney Oast in closed session, there was no interest in changing the language of the referendum.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 4:32 p.m.

Magdalen Burleson
CITY CLERK

Jim M Bellamy
MAYOR

Tuesday – September 11, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer (excused from meeting at 5:45 p.m.); Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Mayor Bellamy asked for a moment of silence to remember those who lost their lives on September 11.

Councilman Hunt gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING SEPTEMBER 15-OCTOBER 15, 2012, AS "HISPANIC HERITAGE MONTH"**

Mayor Bellamy read the proclamation proclaiming September 15-October 15, 2012, as "Hispanic Heritage Month" in the City of Asheville. She presented the proclamation to Ms. Sarah Nunez who briefed City Council on some activities taking place during the month.

**B. PROCLAMATION PROCLAIMING SEPTEMBER 17-21, 2012, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"**

Mayor Bellamy read the proclamation proclaiming September 17-21, 2012, as "Minority Enterprise Development Week" in the City of Asheville. She presented the proclamation to Mr. James Lee who briefed City Council on some activities taking place during the week.

**C. PROCLAMATION PROCLAIMING SEPTEMBER 21, 2012, AS "DAY OF PEACE"**

Mayor Bellamy read the proclamation proclaiming September 21, 2012, as "Day of Peace" in the City of Asheville. She presented the proclamation to Ms. Rachael Bliss and others who briefed City Council on some activities taking place during the day.

**II. CONSENT AGENDA:**

At the request of City staff, (1) Consent Agenda Item "C" was removed from the Consent Agenda for consideration on October 23, 2012; and (2) Consent Agenda Item "F" was removed from the Consent Agenda for consideration on October 9, 2012.

At the request of Councilman Davis, Consent Agenda Item "B" was removed from the Consent Agenda for discussion and vote.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 28, 2012**

**B. RESOLUTION TO FUND LOCAL ORGANIZATIONS WITH 2011 AND 2012 EMERGENCY SOLUTIONS GRANT FUNDS**

This item was pulled from the Consent Agenda for discussion and vote.

**C. RESOLUTION ENDORSING THE BUNCOMBE COUNTY GREENWAYS AND TRAILS MASTER PLAN**

This item was pulled from consideration and will be rescheduled on October 23, 2012.

**D. RESOLUTION NO. 12-212 - RESOLUTION AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO USE ELECTRONIC SIGNATURES IN ELECTRONIC COMMERCE WITH THIRD PARTIES AND TO ALLOW THE CHIEF FINANCIAL OFFICER TO USE ANY DEVICE SET FORTH IN N.C. GEN. STAT. SEC. 159-28 TO SIGN ANY CHECK, DRAFT, PRE-AUDIT STATEMENT OR PURCHASE ORDER**

Summary: The consideration of a resolution authorizing the City Manager, and/or his or her designees, to electronically sign City disbursements by check, draft, pre-audit statement, purchase order or any other means on behalf of the City and the finance officer or some other bonded officer or employee maintain the custody of the necessary devices to process such disbursements in accordance to N.C. Gen. Stat. 159-28.1.

The City of Asheville processes hundreds of disbursements in any given week. In an effort to streamline the process, the City has installed computer software that allows City disbursements to be approved electronically. Under North Carolina law, as delegated by City Council, the City Manager, and/or his or her designees, is authorized to sign disbursements on behalf of the City. In addition, North Carolina law requires the finance officer or some other bonded officer or employee to maintain custody of the necessary devices utilized for processing these electronically signed disbursements. In order to work within a paperless system, it is necessary for the City Manager, and/or his or her designees, to sign disbursements electronically.

N.C. Gen. Stat. 159-28.1 states that the governing board of a local government or public authority may provide by appropriate resolution or ordinance for the use of facsimile signature machines, signature stamps, or similar devices in signing checks and drafts and in signing the preaudit certificate on contracts or purchase orders.

Asheville City Council approved a resolution authorizing electronic signatures in 2009. However, although the title of the resolution includes checks and drafts, the concluding paragraph does not specifically include "disbursements by check, draft or any other means." The resolution corrects this exclusion and is intended to supersede the original resolution that was passed.

Regarding City Council's Strategic Operating Plan, this action complies with Affordable and Green in that the City will be reducing the amount of paper needed to process disbursements.

Pros:

- Reduce the amount of paper used by the City
- Reduce the amount of time approval forms travel through interoffice mail
- Increase turn around times for check order approvals
- Improve customer service

Con:

- None noted

No direct fiscal impact. Use of electronic signatures will improve efficiency of system processes.

City staff recommends City Council adopt a resolution authorizing the City Manager, and/or his or her designees, to electronically sign City disbursements by check, draft, pre-audit statement, purchase order or any other means on behalf of the City and the finance officer or some other bonded officer or employee maintain the custody of the necessary devices to process such disbursements in accordance to N.C. Gen. Stat. 159-28.1.

**RESOLUTION BOOK NO. 35 – PAGE 83**

**E. RESOLUTION NO. 12-213 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH MOTOROLA INC. TO PROVIDE MAINTENANCE COVERAGE FOR THE CITY'S RADIO SYSTEM**

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with Motorola, Inc. to provide maintenance coverage for the City's radio system.

Motorola, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of August 1, 2012, through July 31, 2013, has remained the same as last year's cost. Funding for this contract was appropriated in the FY 12/13 budget process.

The renewal agreement reflects an annual charge of $147,163.92 and covers additional equipment purchased by the City to equip new vehicles and replace broken equipment.

This action complies with City Council's Strategic Operating Plan in that it ties back to Council's goal of partnerships to improve critical services / infrastructure. These partnerships also help the City recoup some of their investment in the system infrastructure through fees collected for use of the system.

Pros:

- The primary benefit of this contract is to keep the City's radio system reliable and operational for public safety officers.
- By keeping the radio system in optimal condition the City is also able to provide communication services to several outside agencies, thereby improving interagency communications.

Cons:

- None noted.

As noted above, the funding for this contract is included in the FY 2012-13 Information Technology Services adopted budget.

City staff recommends the adoption of the resolution for radio maintenance coverage for the term of August 1, 2012, through July 31, 2013.

**RESOLUTION BOOK NO. 35 – PAGE 84**

**F. BUDGET AMENDMENT TO AUTHORIZE THE USE OF N.C. STATE DRUG SEIZURE FUNDS**

This item was pulled from consideration and will be rescheduled on October 9, 2012.

**G. ORDINANCE NO. 4117 - BUDGET AMENDMENT TO AUTHORIZE THE USE OF FEDERAL DRUG SEIZURE FUNDS**

Summary: The consideration of a budget amendment, in the amount of $59,000 to authorize the use of Federal Drug Seizure Funds to purchase equipment and Community Policing training for the Asheville Police Department.

The federal drug seizure program is an equitable sharing program which divides the illegal proceeds from drug dealing between the federal government and local law enforcement agencies. It is designed to help off-set the considerable cost of drug enforcement, by allowing local law enforcement agencies to use seized monies for equipment, training, and improvements that might not necessarily be budgeted for by the agency. The illegal proceeds are divided with 20% going to the federal agency adopting the seizure and 80% going to the local law enforcement agency initiating the seizure. The City of Asheville Police Department has received $59,000 in federal drug seizure funding. This proposed budget amendment would authorize the use of this funding for departmental wide Community Policing training, Community Policing Essentials 8 hour training through Virginia Center for Policing Innovation (VCPI) and equipment purchases of X2 TASERs to enhance officer safety for the Asheville Police Department. These are items which are not covered by the APD operating budget.

This action complies with City Council's Strategic Operating Plan in the Focus Areas - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities and Fiscal Responsibility – The City of Asheville will support a stronger, more prosperous community by making smart investments that accomplish lasting, tangible returns.

Pro:

- Federal seizure revenues to cover the cost of equipment and training related community policing activities without impacting the general fund

Con:

- None noted

The fiscal impact would be the increase of $59,000 for training and equipment. Accepting these funds is a significant financial benefit to the APD allowing us to better train and equip our employees. There is no impact to the General Fund budget.

City staff recommends City Council adopt the budget amendment in the amount of $59,000 to authorize the use of Federal Drug Seizure Funds to purchase equipment and training for the Asheville Police Department.

**ORDINANCE BOOK NO. 27 – PAGE 456**

**H. ORDINANCE NO. 4118 - BUDGET AMENDMENT TO AUTHORIZE THE USE OF FEDERAL HIGH INTENSITY DRUG TRAFFICKING AREA FUNDS**

Summary: The consideration of a budget amendment, in the amount of $15,000, to authorize the use of Federal High Intensity Drug Trafficking Area (HIDTA) Funds to provide overtime for members of the Asheville HIDTA for domestic highway enforcement.

The High Intensity Drug Trafficking Areas (HIDTA) program was authorized by the Anti-Drug Abuse Act of 1988 and is administered by the Office of National Drug Control Policy. The original designation of five HIDTA sites in 1990 has expanded into more than thirty areas around the country. The HIDTA's mission is to reduce drug trafficking in the most critical areas of the

country, thereby reducing the impact of illegal drugs in other areas. The Asheville HIDTA will serve as a key drug trafficking reduction effort, critically positioned between the Atlanta HIDTA and the Appalachia HIDTA. The Asheville HIDTA is comprised of members of the United States Drug Enforcement Administration (DEA), Asheville Police Department, Buncombe County Sheriffs Office, Henderson County Sheriffs Office and McDowell County Sheriffs Office. The Asheville HIDTA has receives an ongoing $150,000 annual funding after more than four years of competitive process for the HIDTA designation. The Asheville HIDTA is a component of the Asheville DEA Task Force. The City of Asheville serves as the fiscal agent for the Asheville HIDTA. The Asheville HIDTA has received authorization for an additional $15,000 in federal HIDTA funding. This proposed budget amendment would authorize the use of this funding to provide overtime for members of the Asheville HIDTA for domestic highway enforcement.

This action conforms to the City Council's Strategic Operating Plan under 1) Fiscal Responsibility in that we are using federal HIDTA monies to enhance the Asheville HIDTA's to provide overtime for members of the Asheville HIDTA for domestic highway enforcement, and 2) Safe City in that providing the various equipment and training allows the Asheville HIDTA to provide overtime for members of the Asheville HIDTA for domestic highway enforcement in our region.

Pro:

- Federal HIDTA monies to cover the cost of equipment, personnel and training related to reducing illegal drug trafficking in our region.

Con:

- None noted

There is no impact to the City's General Fund budget. As the project fiduciary the Asheville PD manages the grant which allows these funds to operate as a pass-through to the deputies working overtime related to domestic highway enforcement.

City staff recommends City Council adopt the budget amendment in the amount of $15,000, to authorize the use of Federal HIDTA funds to provide overtime for members of the Asheville HIDTA for domestic highway enforcement.

**ORDINANCE BOOK NO. 27 - PAGE 458**

**I. ORDINANCE NO. 4119 - BUDGET AMENDMENT FOR FIREFIGHTER RECOGNITION PROGRAMS**

Summary: The consideration of a budget amendment, in the amount of $15,803 to appropriate donated funds received from citizens, for procurement of supplies for the purpose of firefighter recognition.

The Asheville Fire Department has received donations from private citizens for the purpose of firefighter recognition. These donations were received throughout fiscal year 2011/2012. The department would like to use these funds to purchase supplies for the annual 9/11 Memorial and Recognition program, supplies for the Pipes and Drum Corp, equipment for the Fire Explorer program and Firefighter Combat Challenge Team, as well as to purchase holiday meals for on duty firefighters this fall and winter. The fire department's annual program allows employees to be recognized for professional accomplishments throughout the year. The meal purchases allow on duty firefighters to prepare a meal in their stations without securing these supplies on their own when many restaurants and stores are closed for the holiday.

This action complies with the City Council Strategic Operating Plan in that it helps to attract and retain quality employees and to ensure operational effectiveness by paying sound

wages and benefits. This action has been reviewed by the Asheville City Council Public Safety Committee with the Committee's recommendation to move to the full Council for consideration.

Pro:

- This action allows for recognition of firefighters without utilizing city tax funds. This action also provides for utilization of these funds as the donating citizens intended.

Con:

- None identified

These funds have been obtained through donations from private citizens for the purpose of firefighter recognition. No city tax funds will be utilized.

City staff recommends City Council approve the budget amendment to receive donated money from citizens.

**ORDINANCE BOOK NO. 27 – PAGE 460**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Smith moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Pelly and carried unanimously.

**ITEM REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

**RESOLUTION NO. 12-211 - RESOLUTION TO FUND LOCAL ORGANIZATIONS WITH 2011 AND 2012 EMERGENCY SOLUTIONS GRANT FUNDS**

Summary: The consideration of a resolution to fund local organizations with 2011 and 2012 Emergency Solutions Grant funds.

In the process approved by Council at the July 24, 2012, Council meeting, the City submitted a timely application to the State of North Carolina Division of Aging and Adult Services (DAAS), Housing and Homeless Unit for Emergency Solutions Grant funding. Funding recommendations were made to the Housing and Community Development Committee by the Homeless Initiative Advisory Committee. These recommendations followed a process that included submittal of letters of intent from eligible agencies, review and preliminary selection by the ESG Subcommittee of the Advisory Committee, and endorsement of those recommendations by the Asheville Homeless Coalition and the Homeless Initiative Advisory Committee.

We have been informed that our application has been approved, with the following agency awards:

| | Emergency Response | Housing Stabilization | Total |
|---|---|---|---|
| **Organization** | | | |
| ABCCM (Steadfast House) | $ 12,445 | $ 23,112 | $ 35,557 |
| Helpmate | $ 15,000 | $ - | $ 15,000 |
| Homeward Bound | $ 10,000 | $ 80,360 | $ 90,360 |
| Salvation Army | $ 23,527 | | $ 23,527 |
| | | | |

| TOTAL REQUESTS | $ 60,972 | $ 103,472 | $ 164,444 |
|---|---|---|---|

We have been additionally awarded $4,914 for use in Emergency Services and/or Housing Stability as well as $50,000 for use in Housing Stability and/or HMIS. Staff will consult with the State about the eligible uses for these additional funds.

These awards are conditional on providing to the State additional information needed and/or assurances that must be provided. These conditions will include, but are not limited, to adequate documentation of required matching funds. These matching funds are provided by the individual agencies (and not the City).

The project directly supports the City's Strategic Operating Goal of *Affordable*: The funded projects support the City's goal for all citizens to have access to safe, sufficient and affordable housing, by addressing homelessness with an emphasis on Housing First.

Pro:

- ESG funding is a key funding resource for emergency shelter, and is now becoming an important resource for rapid rehousing of persons experiencing homelessness;

Con:

- None

Program funding is entirely from the US Department of Housing and Urban Development, through the State of North Carolina. Existing community development division staff will administer the program. No general funds are requested to support this program.

Staff recommends that Council approve the resolution authorizing the City to accept ESG funding, and to provide those funds to the agencies for the programs approved by the State Division of Aging and Adult Services (DAAS), Housing and Homeless Unit.

Two women thanked City Council for seriously considering the ABCCM discrimination complaint made to the US Dept. of Labor against women veterans in their job training program.

Councilman Davis, Chairman of the Housing & Community Development Committee, said this grant is very important to the community. The Committee feels there may be a stoppage in service if this is not moved forward. The Committee recognizes the concern against the ABCCM Steadfast House. He reiterated that these recommendations have been reviewed by the ESG Subcommittee of the Advisory Committee, and endorsement of those recommendations by the Asheville Homeless Coalition and the Homeless Initiative Advisory Committee. At this point, they feel it is still important to move this forward so we can take advantage of these funds.

Community Development Director Jeff Staudinger said that this is the first year the cities have been asked to take over these funds. Previously these funds have been granted directly to the individual agencies, but now the cities are responsible for taking on the responsibility to put the applications forward and help with administration. We are very concerned about a gap of services and we want to make sure as much as possible that persons who are experiencing homelessness can be served as quickly and immediately as possible.

Mayor Bellamy said after talking with the City Attorney's Office, she will invite representatives from ABCCM, a representative from the Dept. of Labor, a representative from Southern Poverty Law Center and a representative of the women veterans to a meeting regarding allegations in order for us to understand the issues brought forward and get those addressed locally, opposed through the Dept. of Labor. The City Attorney's Office is looking for a meeting date. In addition, the Housing & Community Development Committee will be looking at this issue as well.

Mr. Bothwell responded to Councilman Bothwell when he asked who did the apportionment of funding between the different agencies.

Councilman Davis moved for the adoption of Resolution No. 12-211. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 82**

**III. PRESENTATIONS & REPORTS:**

**A. WATER RESOURCES UPDATE**

Project Manager Phil Kleisler updated City Council on the process from August 28 – September 11 by stating (1) Phase I of the internal financial analysis is being completed and beginning Phase 2; (2) regarding communications, (a) internally there have been small and large staff meetings, and (b) externally there have been neighborhood association meetings along with the Project Webpage: www.ashevillenc.gov/projects; (3) regarding governance models, they are continuing to work with Raftelis Financial Consultants (which contract was approved on 8-28-12), and the progress report at the October 16 City Council worksession; (4) regarding asset value there was a conference call with Raftelis; and (5) the joint meeting with the legislators is still scheduled for September 18 at 1:00 p.m. in the U.S. Cellular Center Banquet Hall. As Representative Keever, Senator Nesbitt and Senator Apodaca have scheduling conflicts, they all would like to be kept updated and would be open to trying to find another suitable time and date for a meeting. There has been no response from Representative Moffitt

Mayor Bellamy noted that only Representatives Fisher and McGrady would be able to attend the September 18 meeting and wanted to confirm with Council that the joint meeting will still be held with only two representatives present. She would be willing to meet with Senator Apodaca at home if that would be something he would be interested in due to his recent medical condition. She again stressed that it's important that we hear from our legislators on this issue.

After a brief discussion of whether to offer another meeting date for the joint meeting, it ultimately was the consensus of Council to move forward with the September 18 meeting date with Representatives Fisher and McGrady and updating those that cannot attend.

Councilman Hunt said that he was unable to attend the meeting; however, he felt it was appropriate for Council to move forward with that meeting.

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING REGARDING THE SALE OF REAL PROPERTY LOCATED AT HAYWOOD STREET AND PAGE AVENUE TO MCKIBBON HOTEL GROUP INC. FOR ECONOMIC DEVELOPMENT PURPOSES**

**RESOLUTION NO. 12-214 - RESOLUTION APPROVING THE SALE OF REAL PROPERTY LOCATED AT HAYWOOD STREET AND PAGE AVENUE TO MCKIBBON HOTEL GROUP INC. FOR ECONOMIC DEVELOPMENT PURPOSES**

Due to a conflict of interest, Councilman Davis moved to recuse Vice-Mayor Manheimer from participating in this matter. This motion was seconded by Councilman Hunt and carried unanimously.

At 5:45 p.m., Councilman Hunt moved excuse Vice-Mayor Manheimer from the remainder of this meeting. This motion was seconded by Councilman Bothwell and carried unanimously. At this time, Vice-Mayor Manheimer left the room for the remainder of the meeting.

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City Attorney Oast said that this is the consideration of a resolution approving the sale of real property located at Haywood Street and Page Avenue to McKibbon Hotel Group, Inc., for economic development purposes. This public hearing was advertised on August 31, 2012. He provided Council with the following staff report:

"A. **Background**. The Subject Property consists of approximately 3/4 of an acre located on the southern side of the intersection of Page Avenue and Haywood Street in downtown Asheville. The U.S. Cellular Center, Vanderbilt Apartments, and Pack Memorial Library are across Haywood Street to the east. Property owned by the Catholic Church, currently vacant, is located immediately across Page Avenue to the North, slightly beyond that, and across Haywood Street, as it curves to the west is St. Lawrence Basilica. The Battery Park Apartments are across Page Avenue to the west. Immediately adjacent to the South are building in various commercial and office uses. The Grove Arcade is located to the south and west. The property is traversed by Battery Park Alley, running north to south.

The City acquired this property in several transactions occurring during 2001 to 2004 in connection with a parking facility that was planned but not built. The property was to be used initially for staging for the parking deck construction. Upon completion of the parking deck, the property was to be developed for commercial or mixed use purposes. Some conceptual plans for this area were prepared with such uses in mind.

In 2007 – 2008, the City solicited proposals from developers for the development of the Subject Property. In February of 2008, the City selected the proposal submitted by McKibbon Hotel Group ("MHG") as the one it wished to proceed with. The proposal was revised at the request of the City and resubmitted in September of 2008. The timeline since then, including development of conceptual plans for the project was reviewed in detail in a report provided to City Council on August 14.

B. **Legal considerations.** The statute pursuant to which the City proposes to sell the Subject Property to MHG is N.C.G.S. 158-7.1, which authorizes the sale of property by private negotiation and sale for economic development purposes. In order to dispose of property pursuant to this provision, the City must first hold a public hearing with advertised public notice. By resolution adopted on August 28, the public hearing was set for September 11. Notice of this public hearing was published on August 31.

Another requirement of the statute is that the consideration for the property cannot be less than the fair market value, subject to the conditions placed on the property. An appraisal prepared by Francis Naeger dated March 9, 2012, establishes the value of the property at $2,526,000. This appraisal assumes that the existing parking garage (68 Haywood Street), a restaurant building (76 Haywood Street), and office building (33 Page Avenue) have been demolished and removed. The appraisal also assumed certain limitations as to the use of the property and the height of the building. MHG has offered $2,526,000 for the Subject Property, subject to a capped reimbursement from the City for the expense of the demolition and removal work that the appraisal assumes has been done.

Another requirement of the statute is that the conveyance of the property must be consistent with the economic development purposes of the statute, which specifically include commercial and business uses, or otherwise in the public interest. To this end, the City is required, before selling the property, to determine the "probable average hourly wage to be paid to workers as to business to be located on the property."

C. **Public hearing.** With the above statutory considerations in mind, the main purpose of the public hearing is to receive information regarding the economic aspects of the

proposed development, including consistency with the City's economic development goals and objectives, the number of jobs, anticipated wages for those jobs, tax impact, and business activity impact. While information regarding the design of the project is relevant to a certain extent, it is important to remember that the design of the project has not progressed beyond the conceptual stage yet, and detailed plans will not be prepared until MHG has a contract for the property. Like any other project in downtown, this project will undergo extensive design review as prescribed in the UDO and the Downtown Master Plan, adopted in 2010.

**D. Economic development/planning considerations.**

1. *Consistency with economic plans.* The development of a hotel on the Subject Property is consistent with the City's economic development plans and the economic development purposes of the statute.

   City's 2025 Plan states (p.71) that promotion of infill development ...is absolutely essential in addressing the tax equity, tax base enhancement, and Smart Growth development goals of the City.

   Goal VIII of the Economic Development Chapter of the City 2025 Plan (p. 203): Create an inventory of property suitable for development or redevelopment for targeted industrial and commercial uses and implement a program to encourage development or conversion to these uses.

   City Council in Nov 2006 agreed to make clearly known and that responders clearly understand that their opportunity to obtain City-owned property for development is dependent on their prior experience and success in meeting similar goals in other situations:

   - Potential to promote new or revitalized entertainment venues
   - Consistency with City Plans or policies, including Smart Growth and environmentally friendly/green building development practices
   - Place-making design that complements our unique downtown business and residential communities and takes constructive pubic input into consideration
   - Provision of strategically sited public parking
   - Ability to accommodate all modes of transportation
   - Potential for significant tax base enhancement

2. *Wages/tax impacts.* The number of persons expected to be employed at the hotel during normal operations is 36 full-time and 25 part-time. Of the full-time positions, six will be salaried management positions paying an average of $50,000 per year. The probable average hourly wage to be paid to hourly workers at the proposed hotel is $10.00 per hour. This does not include workers employed in other businesses that may locate on the property. In addition, during construction, there will be 400 jobs, paying at or above the average wage for jobs in the construction sector in the area. Upon completion of the project, the City would receive taxes based on the tax-assessed value. Although no value has been assessed yet, recently completed hotels in the City have ranged from $10 million to $16 million in assessed value, with ad valorem tax revenue ranging from $42,000 to $67,000 annually, based on current tax rates.

3. *Consistency with downtown master plan.* The project is a Level II project and must follow all development review procedures specified in the zoning ordinance, including review by the Downtown Commission and Planning & Zoning Commission, before approval.

The Downtown Master Plan indicates a need for new development downtown, stating (p. 19) that "...excellent compatible infill projects within the historic fabric must be a high priority," and that "there is a need for a new focus on larger, more complex projects targeted to sites in the traditional Downtown...". The Plan places this site in the "Traditional Downtown District." It states (p. 68) that in this area "thoughtfully designed new buildings are appropriate..." and that "continued investment in existing and new buildings is necessary for the District to continue to thrive." It further states that "Adding appropriate new development on Haywood can help existing properties - historic or not – gain value."

E. **Conditions/Development Agreement.** Assuming that Council approves the sale of the Subject Property to MHG, it may direct that certain conditions be placed on the property intended to ensure that the project meets the economic development purposes for which it is being sold. These could include use of the property for a hotel, as well as some broad design criteria (i.e., number of rooms, height/number of stories). The contract to be signed by the parties will require that MHG prepare and submit a development schedule, to include the process for performing due diligence work, getting zoning and building approvals, and obtaining financing. This will be followed by a development agreement, which will incorporate the zoning approvals, and contain more details about the operation of the hotel.

F. **Other Issues.** Other issues that have arisen include the following:

1. *Design Control*: The proposed project is a Level II project and is not a project for which a conditional use permit is required under the zoning ordinance, and the usual mechanisms for exercising design control are not available. No zoning change is necessary in order to develop the property for a hotel, and no special zoning allowances are being sought for which conditional zoning might be appropriate. Nevertheless, the City owns the property, and may exercise design control through restrictions or covenants in connection with the sale of the property.

   There are two main vehicles for doing this: (a) deed restrictions; and (b) contractual provisions. Deed restrictions should include conditions, such as the use of the property and broad dimensional restrictions, that are not likely to change, and may be necessary to ensure that the property is used for the purposes for which it is sold. The contract for the purchase and sale of the property covers such basic terms as price, description, and due diligence requirements. It will also specify a design preparation and review process - - following the UDO - - that will result in an approved final design for the project. The final design approval will be incorporated into a development agreement for the property. The property will then be conveyed for development in accordance with the agreement.

   With this sequence in mind, the proposal submitted by MHG in 2008, as revised in 2012, and as will be presented by MHG at the public hearing, may be incorporated by reference into the contract. Because the project must still undergo the detailed review and approval process specified in the UDO, however, these plans are necessarily conceptual, and are subject to adjustment and refinement through the review process. To the extent that such adjustments are a matter of concern to Council, Council may specify that any substantial deviation from the conceptual plan may subject the project to further review. "Substantial" would need to be defined.

2. *Financial Assurance*. It is difficult and prohibitively expensive to procure a guarantee of completion in a project of this size and nature. Commercially reasonable practices include (a) obtaining a list of similar completed projects (this was done in the RFP process); (b) a requirement for a commitment for financing from a recognized financial institution prior to closing; (c) evidence of satisfaction of financing conditions;

(d) a requirement that construction be started by a certain date and completed by a certain date; (e) regular construction progress reports; (f) a right to repurchase the property if the project stalls or is abandoned. It would be appropriate to include some combination of these provisions in the development agreement.

3. *Commencing/Completing Construction/Removal of Existing Buildings.* The contract will specify a time for obtaining completion of detailed design work and commencement of construction (12 months) and the time within which construction must be complete (24 months after commencement). If these deadlines are not met, the City would be able to invoke the right to repurchase. With these time constraints, the removal of the buildings would likely occur as the first step in the construction process, but could be one of the construction progress benchmarks in a development agreement.

4. *No Damage to Surrounding Buildings.* The Subject Property is near or adjacent to several historically significant and structurally sensitive buildings, notably St. Lawrence Basilica, the Grove Arcade, and the Battery Park Hotel, all of which are on the National Register of Historic Places. The development agreement could include requirements for seismic monitoring and consultation with a geotechnical engineer.

5. *Compatibility with Potential Public Space.* There is significant community interest in some public space being located on the land directly adjacent to the north of the Subject Property, between the Subject Property and St. Lawrence Basilica. This area includes Page Avenue and Haywood Street. Parks and piazzas are among the ideas that have been discussed. However, nothing has been planned yet, and the City does not own or otherwise control all of the property that would be needed for such a project. The conceptual designs presented by MHG are adaptable to a park or other public space in that area, and it is in MHG's interest to anticipate this in its design, without depending on it. Inclusion of the conceptual plans and approved plans in the contract and development agreement are indications that MHG's design will not preclude or limit the use of the adjacent property for a park or open space.

6. *Appraised Value.* Pursuant to the statute, N.C.G.S. 158-7.1, the Subject Property may not be sold for less than fair market value. The appraisal for the property was prepared by a State-certified, MAI appraiser, and is available for review.

It is recommended that Council hold the public hearing. At the end of the public hearing, or at any subsequent meeting, if Council approves of the conveyance of the property to MHG, Council may adopt a resolution directing the sale of the property upon such terms as it specifies, including conditions regarding the use of the property."

City Attorney Oast oriented Council to the .77 acre site using a picture and survey of the property.

Economic Development /Civic Center Director Sam Powers provided Council with a brief review of the timeline concentrating primarily on the RFQ/RFP process review. He also reviewed the RFQ/RFP criteria of land use(s), community, economic and timing of development. He outlined the developer pre-qualifications desired and the developers who met those qualifications.

City Attorney Oast then briefed Council on the law and legal requirements pursuant to which we are pursuing this transaction. The issue is whether to approve the sale of property at Haywood Street and Page Avenue to McKibbon Hotel Group. He said the applicable law is N.C. Gen. Stat. sec. 158-7.1 which allowed a city to convey property by private negotiation and using that process we can impose conditions. Some statutory requirements we must follow include (1) we must post notice of the public hearing and hold the public hearing; (2) we may not sell for less than fair market value; and (3) determine probable average hourly wage to be paid to the workers

at the business to be located on the property that you are planning to sell. We had an appraisal completed on March 9, 2012, that appraised the value of the property at $2,526,000. The interest being conveyed is a fee simply (by special warranty deed) which may be subject to conditions, such as the type of a hotel, and fairly broad dimensional criteria such as height. The consideration for the City to be paid is $2,536,000 at closing. There is no other consideration. We are required to make certain determinations regarding the probably average hourly wage. There will be 30 full-time hourly; 25 part-time hourly – with average wage of $10.00/hour. There will be 6 full-time salaried positions - $50,000/year (that is for the hotel only and does not include other businesses on the site).

City Attorney Oast then briefed Council on the contract: (1) the basic terms (location, price, interest to be conveyed (including conditions, noting the McKibbon proposal at this meeting will be incorporated); (2) process to closing (a) due diligence by McKibbon; and (b) permits/approvals (technical review, Downtown Commission, Planning & Zoning Commission, one additional community meeting which can be facilitated by the Asheville Design Center) – Level II project; (3) would not close until financing/construction commitments in place (City to review); and (4) one year to close.

Mr. Powers then discussed with Council the consistency of the project with the economic development goals of the City, as outlined in the staff report provided to Council.

In response to Councilman Hunt, City Attorney Oast said that the .77 acre tract being discussed is the McKibbon proposal presented at this meeting, which will be incorporated into the contract.

At 6:17 p.m., Mayor Bellamy opened the public hearing.

Mr. Wyatt Stevens, attorney representing the McKibbon Hotel Group, introduced Mr. John McKibbon, Chairman of the McKibbon Hotel Group, and Mr. Chad Robertson, Project Architect, and asked that after the public hearing that he be allowed 10 minutes for response. He provided Council with a copy of the PowerPoint presentation, along with several letters supporting the McKibbon Hotel Group proposal.

Mr. McKibbon, developer and operator of the proposed hotel, used a PowerPoint to explain a brief history of McKibbon, their local connections, their community involvement, and what McKibbon brings. He showed various projects of McKibbon, noting that hotels make great neighbors. He provided statistics on hotel occupancies and rate trends. He said that McKibbon Hotel Group has 3 hotels currently under construction (and 2 recently opened). All have received financing and they have raised equity for them. They are in a strong situation to build, even in this challenging economic environment. They are experienced in management and mixed-use, urban development. They have equity on hand and the ability to finance this project today. They would be ready to open in 2014. He provided the following economic impact estimate;

Purchase Price - $2,526,000 (demolition costs up to $224,000 to be reimbursed)

| | | |
|---|---|---|
| Hotel-Only Employees | Salaried Management | 6 |
| | Other Full-Time | 30 |
| | Part-Time | 25 |
| Restaurant/Retail Employees | | 50 |
| Annual Sales Tax | | $400,000 |
| Annual Hotel Tax | | $200,000 |
| Annual Property Tax | | $200,000 |
| GC Hard Construction Cost Only | | $19,000,000 |

| | |
|---|---|
| Total Development Cost | $25,000,000 |
| Appropriate Wages from Construction | $ 7,000,000 |
| Jobs from Construction | 400 |

Additional (1) impact on neighboring properties (sales, taxes, employment); (2) support for tourism industry; and (3) impact on US Cellular Center operations.

Mr. Robertson showed various conceptual renderings of the area, before and after the hotel. The proposed plan would construct a building that would house approximately 140 hotel rooms, a parking deck, and retail space along Haywood Street and Page Avenue and as part of this proposal a plaza space of approximately 5,000 square feet. One of the primary goals of the project is to increase pedestrian activity along Page and Haywood. The project could include a much larger plaza area and to be clear, this space cannot occur without a partnership between the City and the Basilica. McKibbon is ready and willing, and has participated in design meetings to discuss a plan that would enable this project to take place. He said the view corridors along Haywood Street have been a concern. He showed drawings of how their proposal is sensitive to Asheville's downtown, noting that the views of the Basilica remain obstructed as you look north towards Haywood Street. The proposed height of the building on Haywood Street is no more than 90 feet and well below adjacent buildings. On Page Avenue the building will be no more than 75 feet. From the face of the guest areas to the face of the Basilica will be at least 170 feet separation between the two faces. He also provided Council with a height comparison of major buildings in our traditional downtown core, demonstrating that their proposal would be very comfortable with its neighbors. He provided Council with conceptual renderings which reflect the architectural vision and their materials will reflect those of the neighbors and even if Page Avenue remains unchanged, their building will incorporate an outdoor plaza space. As the design is viewed from the steps of the Basilica the building will be scaled appropriately for the traditional downtown core and a catalyst for development of an area currently devoid of any activity.

Ms. Alice Cella, representing the Roman Catholic Parish of the Basilica of St. Lawrence, said that as Council considers placing a hotel or an open plaza in the .77 acres, she brought to their attention an important factor in the whole decision is the Basilica of St. Lawrence itself. It's not just a beautiful old church in downtown Asheville. It is an unparallel structure in the City, not only for its antiquity but for its classic artistic form. The irreplaceable brick work is a display of excellent craftsmanship no longer available and it is crowned by the largest unsupported elliptical dome in this continent. The building has been on the list of National Historic Sites for years and was recently elevated to National Historic Sites of Distinction. We expect within the near future to have the Basilica honored with the title "National Historic Landmark." The Basilica enjoys worldwide recognition. She outlined the world-wide fame of architect and designer of the Basilica Rafael Guastavino. Such a beautiful jewel as the Basilica in the heart of the City deserves an open environment to compliment it, rather than a building to over-power it. Another consideration is the shadow factor. She said the Basilica will stand in the shadow of that hotel. She felt there are many other suitable hotel locations in Asheville. The City has one opportunity here to establish a graceful welcoming space that will compliment the Basilica and the US Cellular Center. She said that the Catholic community and Basilica representatives bring experts to the table, like exporters in Guastavino architecture and engineering, the latest seismic monitoring to protect the Basilica, patrons of the arts to make this more than commercial project financially feasible, a first-class developer with sensitivity to Asheville's historic image, and a 147 year history of partnering with the City and the community (mentioning several partnership). She said Council has a choice between a landmark plaza or another hotel project. This is a once in a lifetime decision and no developer has what the Basilica represents for this community. She felt what seems to be ignored is the history the Basilica has brought to this community and the services they deliver to this community for the past 147 years. That will continue for centuries to come, when all the developers have long gone. Having the Kessler Development Group deliver the plans on the St. Lawrence Plaza without interference is simply the right thing to do.

Mr. Matt Mores, real estate consultant to the Basilica, said that he met with two Council members earlier who both felt the RFP had expired. He said that the City's income would be the same where the City goes with the McKibbon proposal or the Basilica proposal. The difference would be that one group delivers a known developer partner the Basilica can trust will deliver the plan they envision and that the majority of citizens want with proven confidence he will protect the history of the area and Basilica. They know this plan will guarantee a large open plaza with line of sites to surrounding buildings and enhancement forever the area. He said a world class plaza delivered on this property could attract developers all over the world to come to Asheville and have a much larger impact for money coming into our City. That will definitely not happen with just another hotel. He suggested Council review the Plazas of the World study and study the commerce impact that plazas have on a city. Over the next 7 months instead of the City looking for reasons to work with the 147 year Basilica partner and historical landmark, the people surrounding the RFQ spent all their time discrediting their plans and his company with Council, prompting Council to question who would develop the site for the Basilica and build this plaza. Then when they announced in June one of the most qualified developers that has come to this City in over 40 years, Richard Kessler, there was a full court press to further discredit his company and move the RFQ agenda forward quickly, along with rushing to open the Aloft Hotel before it was fully completed. Richard Kessler then received an interference letter from John McKibbon forcing Richard to respond. The City is now asking the Basilica to compromise themselves to approve a hotel product that we are all against on this site and to choose a less qualified developer over the Basilica partner Kessler, who is the most qualified today for this plaza and will have the Basilica's best interest from day one, and not continually evolve only because of public pressure. This RFQ has changed from 2007 to 2012 because of the pressure the Basilica to request excellence for the site. More hotel rooms have been built in this City in the past three years than in the past 25 years. There are 3-4 other hotels that will naturally come into the market in the next few years, with the potential for over 700 rooms added to the economy in just 3-4 years. The Basilica should be allowed some private non-interference period to allow Kessler to step forward and deliver his architectural drawings and designs for the St. Lawrence Plaza. He asked Council to erase their minds and start as if this was the first time the plaza development from the Basilica was being proposed. He provided Council with a copy of a letter dated August 31, 2012, from Mr. Richard Kessler.

The following individuals spoke in support of the McKibbon proposal:

Ms. Kim MacQueen, residential/retail property owner on Haywood Street
Mr. David Madden, Co-Chair of the Rafael Guastavino Museum Project
Mr. Mike Burke, Chairman of the Civic Center Commission
An instructor in the Hospitality Education Department at A-B Technical Community College
Mr. Pat Whalen
Ms. Suzanne Hudson, representative of the Caddick Foundation
Ms. Liz Barr, resident of Asheville

The following individuals spoke in opposition of the McKibbon proposal and in support of the Basilica proposal:

Mr. Mack Cox
Mr. Derek Allen, attorney representing Hotel Indigo, Four Points by Sheraton and the Renaissance Hotel
Mr. Lyons
Ms. Donna Bollinger, volunteer gardener at the Basilica
Mr. Scott Hollowell, not a City resident
Ms. Anne Fitzgerald Smith
Ms. Alisha McNabb, resident of Asheville
Property Manager at the Basilica
Ms. Ellen Lyle, resident of Asheville

Mr. Jack Thompson, Executive Director of the Preservation Society of Asheville & Buncombe County, asked that Council empower the Downtown Commission process by ensuring that design recommendations for this development made by the Commission, regardless of the developer, be mandated as a directive of the development agreement. They strongly recommend utilization of the Asheville Design Center as a consultant to the design process. Serious consideration of a downtown local historic district is far overdue. This process calls for the most stringent monitoring of the seismic effects of any construction that occurs.

Mr. Tom Gallaher, Secretary and Board Member of the Asheville Design Center, said that they met with the City, the Basilica and McKibbon and proposed that the Asheville Design Center act as a referee to the various interests. The three meetings held yielded a great deal of success. He then read the 6 points of agreement that all three bodies agreed upon: (1) a plaza must frame and enhance the Basilica while uniting it with adjacent historic structures, such as the Grove Arcade and other sites in downtown's National Register of Historic District; (2) site use will include the plaza, retail along Haywood and Page, the proposed hotel and parking; (3) site control allows transactions between and among the City, the Basilica and McKibbon; (4) design of all elements must respect an honor the Basilica as well as other notable uses and buildings nearby; (5) massing of the hotel must help contain the site and unify all surrounding elements; and (6) master plan and UDO regulations apply as do suitable variances. He said the Asheville Design Center does not specifically endorse a park, a hotel or the Basilica proposal. They seek to work with all the parties.

Ms. Elaine Lite favored a community green space and park or a plan for a combined living and retail green space that will be far less massing in design and scale than the McKibbon Plan.

Mr. Joe Cauble, downtown resident, spoke in support of a park on the .77 acre tract.

Mr. William Robertson, downtown resident, felt Council should reject both proposals and take their time to build something worthy on that property that will last forever.

Rev. Lisa Landis supported going through another RFP process.

Mr. Stevens said the attorney that represented other hotels downtown argued that the RFP process was stale or fatally flawed, but it is not. City Attorney Oast and Mr. Powers both explained why it took so long to get to this point. It was not anything that McKibbon did or failed to do. Everyone loves the Basilica and it is a special religious place. Nothing that McKibbon is trying to do with this proposal will change that. Nothing in this proposal will affect the view of the Basilica at any angle and nothing from the 90 foot high building is going to cast such a massive shadow 170 feet away. The Basilica's plan is to pay $1 Million upfront and then pay $1 when they get a development agreement, that they don't even have yet with Mr. Kessler. How do we know that Mr. Kessler can secure the financing and build the plan that they propose for him to build. We don't know that. He said that his office did not send any threatening letter to Mr. Kessler and he was not aware of any threatening letter sent to Mr. Kessler. He was welcome to be here and articulated his position. The plan that McKibbon proposes will compliment the Basilica because Mr. McKibbon has worked with folks from the Basilica and listened to them and proposed a plan that calls for a plaza, when that was not originally intended. McKibbon would love to build a full 18,000 square foot plaza and that could still be done, but it will involve cooperation by the Basilica. To deny this process and open up the RFQ/RFQ process back up would be wrong. He encouraged Council not to do that. Mr. McKibbon has earned the right to build this project and he has the integrity to deliver a high quality project that will be good for the City and the Basilica and we will all be proud of for decades to come.

In response to Ms. Bollinger, Mayor Bellamy said that the McKibbon Hotel Group did not donate any money to the City of Asheville. If received, the donation would have been accepted by City Council via a budget amendment.

At 7:50 p.m., Mayor Bellamy closed the public hearing and announced a short recess.

Councilman Hunt said that he will make a motion to approve the sale to McKibbon and would be open to conditions by Council to assure the performance of McKibbon. He believed we have followed through and met the goals of the RFP process started several years ago. He believed the project as presented by McKibbon will also fulfill a number of community goals. He felt that the evolution of the design and the adaption of the McKibbon to community needs around the Basilica is good and felt the Basilica will be honored by the project. He believed the project will increase downtown vibrancy in that area of downtown. His greatest concern about the environmental integrity of our region has to do with sprawl development and fragmentation of the rural landscape. In development is a very important step. He feels this project will meet the goals of the 2025 Plan. He emphasized that the component of this project is the plaza between the hotel and the Basilica is a separate project and he will work to see that happen. He believed that due to the integrity of the McKibbon Hotel Group and that we have well-developed plans he felt we can execute a project in a controlled intentional way for a good outcome. He felt that as divisive and contentious as the discussions sometimes have been, the engagement by advocates of the Basilica have helped improve this design. Partnering with the Asheville Design Center was also important to that. Council has been well aware that if they felt that the McKibbon proposal was not going to meet their goals they could have stepped aside. It was pointed out that hopes and dreams were expressed by the Basilica about a great development that might be able to occur given a chance for fund-raising and developing partnerships. Over the past 16 years in his professional career in grants, it is very difficult to get that from a dream to reality. The City has had significant projects get started that were not able to ultimately take root. Addressing a public park on that property, City Council is committed to developing public parks in places where there is a high priority and we have a limited budget to do that. To those that are concerned if another hotel is needed, he said there a lot of different ways to look at occupancy rates and economic impact. He felt the trend for hotel demand in downtown is plenty strong to support this project. He appreciated Mr. McKibbon's transparency and pragmatism involving his design to be something of real quality. He appealed to Mr. McKibbon to follow through with promises made.

Councilman Hunt then moved to adopt Resolution No. 12-214 approving the sale of property located at Haywood Street and Page Avenue in downtown Asheville to McKibbon Hotel Group for economic development purposes. This motion was seconded by Councilman Smith.

Councilman Smith said that the original intent of the city-owned land sale process when this first came forward was to figure out how to make sure there is affordable housing in the City. It is very difficult to get affordable housing built in downtown. He does feel that this is an opportunity for the City to return to the original intent of this process and say that the funds from this land sale can go to support the Affordable Housing Trust Fund and to support more other affordable housing efforts in coming years. The public purpose served by the economic development land sale would be not only for tourism development downtown but also for the future development of a plaza in cooperation between the Basilica, McKibbon, the City and others. He would like to see the proceeds from the .77 acre go to affordable housing. That site is now dead space and the City will not support urban blight in its downtown core. This process has been going on for a decade and we now have a developer who is willing to work within the downtown design guidelines and go above and beyond that with a development agreement with the City. We have the opportunity to enliven that area of downtown. He was pleased to hear from the man who is doing the Rafael Guastavino speak about the possibility of some sort of homage within the building itself. He expected McKibbon's best work and that they work toward paying their employees living wages.

In response to Councilman Bothwell, City Manager Jackson said that this property was purchased with Parking Funds. Council has the ability to evaluate the condition of the Parking Fund and if it's meeting its obligations, Council then has the ability to reprogram funds as Council has in the past for transit and other purposes.

Councilman Bothwell opposed the motion in that he felt the RFP has expired in terms of the original contract. Immediate implementation was part of the contract. To have the reputation that Asheville is good to do business with means not only do we honor our side, we insist people who sign contracts with the City honor their side. He felt the overall impact of the development has been very poorly thought out. We now have a much better Planning Department than we did 10 years ago and the advantage of the Asheville Design Center. He felt we need to re-think the intersection in front of the US Cellular Center first and then decide what property we really have to sell. A number of different proposals have come forward over the years. He felt the people of Asheville seem overwhelming against the development of a hotel on this site. Many favor a park but Council is resistant to ask our residents if they would be willing to pay another ¼ cent on their taxes in order to fund a park. He felt Council should listen to the people. He felt the selling price is too low for a premier undeveloped parcel in the City. The appraisal is deeply flawed in that the comparables used are not appropriate. He suggested waiting a couple of years until the real estate market has rebounded.

Councilman Pelly said that having participated in this process for almost nine months, he believed the McKibbon proposal is the right path for the City at this time.

In response to Councilman Davis, City Attorney Oast said that if Council has any conditions they would like to insert, now is the time to bring those up. There are some things we don't and can't know until the project gets further into the process, e.g., things that will come out of the technical and design reviews that are conditions on any project. The conceptual plans seen by Council at this meeting are incorporated into the contract. He said conditions regarding the height and setback are already incorporated into the resolution. We will, through the contracting process do what we can to ensure that our advisors take a look at the financial commitments that McKibbon receives and the construction contracts.

Councilman Davis asked if there is opportunity to mention concerns in general about the protection of the Basilica, the distance from the Basilica, the site lines, traffic management plan, height of the buildings, etc. and come back with a more defined document. City Attorney Oast said we have a pretty straightforward contract as to which there are still some details to work out. These are the kinds of details we will know more about as the project goes through the approval process. He would be happy to brief Council on those at any time.

Councilman Smith offered the following friendly amendments to the motion: (1) the height of the structure not be higher than 90 feet on the Haywood Street elevation and 75 feet on the Page Avenue elevation; (2) the hotel tower must be set back at least 170 feet from the front or southern face of St. Lawrence Basilica; (3) traffic management plan; (4) the structure will accommodate a future plaza and that the City cannot in any way prohibit the development of this future plaza; and (5) guarantees that this development will not injure the Basilica.

Councilman Smith also hoped that the demolition costs do not go as high as $225,000 so the City will be able to recover more of that money.

In response to Councilman Smith regarding his request to ensure that the Basilica is not at any time shadowed by the structure, Mr. Robertson said he did a cursory review of what the shadows would be on the site based on the heights of the buildings now and the distance from the building to the face of the Basilica (based on the UDO guidelines – September 21 – March 21) and the Basilica would never be in the shadows from 10 a.m. to 2 p.m. City Attorney Oast felt that the shadow constraint is incorporated into McKibbon's design.

Councilman Bothwell said that from September 21 – March 21 is not the lowest part of the sun. He questioned if the hotel will shade the Basilica at Christmas, at which time the sun is much lower. Mr. Robertson said that he did not input December 25 into the software model because the UDO regulations were from September 21 – March 21.

When Councilman Hunt asked Mr. McKibbon if he was prepared to commit to a development that does not shadow the Basilica at any time of the year, Mr. McKibbon said he did not have an answer for that. He said they will do the study and staff can make a decision. He said they can't lower the building or it doesn't work economically.

In response to Councilman Smith, Ms. Jill Hamburg, geotechnical engineer, said that this team is committed to making the best design to limit vibrations from leaving the site. It is the intent of the design to use shallow foundations or non-vibration inducing construction techniques to limit vibrations from moving from the site. That is part of the design plan. As far as monitoring the vibrations, typically vibrations are monitored in a radius from the vibration-inducing activity. You can design construction solutions on a specified distance from the vibration-inducing activity. Also the design team is also considering the buildings that are about 10 feet directly adjacent to the new structure. Their design will also take into consideration any implements that would happen to those buildings as well. In summary, they will try to limit the vibrations and monitor the vibrations as they are produced at the edge of their site.

Councilman Smith hoped that the discussions can resume between the Basilica and McKibbon representatives with the Asheville Design Center so we can ensure the structural integrity of the Basilica and be able to move towards the future plaza.

Councilman Hunt noted that attached to the resolution is a conditions page which includes the height and distance conditions Councilman Smith mentioned. He accepted Councilman Smith's amendment to no shadow requirement.

Councilman Hunt amended his motion to require that the McKibbon Hotel Group entertain public input in at least one session, that includes the Asheville Design Center collaboratively and that McKibbon, in good faith, will entertain reasonable suggestions to improve the design of the hotel based on public input and that the City won't unreasonably withhold our agreement should there be reasonable design suggestions that seem viable. Councilman Smith accepted this amendment.

Regarding the amendment regarding seismic monitoring, Councilman Hunt suggested the condition be that McKibbon shall retain a qualified geotechnical engineer and that during construction McKibbon Hotel Group follow the directions of that engineer and use best practices to ensure no seismic damage to the surrounding properties. Councilman Smith accepted this amendment.

Regarding McKibbon's participation in an evolution of a plaza, Councilman Hunt suggested a condition that the McKibbon Hotel Group not only simply allow for a plaza to be built, but ensure that their design in their development and construction techniques actually facilitate in a positive way to ensure that a plaza can be built. Councilman Smith accepted this amendment.

Councilman Hunt accepted Councilman Smith's condition regarding a traffic management plan.

Councilman Hunt amended his motion to also include the following two conditions: (1) staff have another MAI appraisal by a different appraisal firm than the first one and based on the results of the second appraisal that the purchase price be set at the higher of the two appraisals; and (2) the design that the McKibbon Hotel Group would implement is the current drawings presented at this meeting, exclusive of the inclusion of the plaza. Councilman Smith accepted both of these two additional conditions.

Councilman Davis asked if, after the hotel is built, the streets will be able to handle the stormwater once it comes off the hotel site. Public Works Director Cathy Ball responded that most part of the area is impervious now and there will have to be some stipulation for how the roof drains go on the new building. That will be looked at during the plan review process. They will be required to not redirect the water into a street that it didn't go before.

Councilman Davis said that due to some construction at the US Cellular Center there will be some street realignment in front the US Cellular Center. He hoped that we can dovetail that discussion with McKibbon.

Councilman Davis reiterated that we identified underutilized property back in 2005 and we added this property to find a high and better use for it. He will trust McKibbon will be using quality materials, and that the fenestration and design of the building will be something the City of Asheville will be proud of.

Councilman Bothwell said that City Council has the authority to make downtown design review mandatory compliance, not optional. City Attorney Oast said that mandatory compliance is not what is provided for in the Code now. Since this is City-owned property, it is something that Council can do, but he felt Council should be cautious about doing it. The City has worked for a long time to get the processes in place to ensure that projects would turn out of the way Council wanted them to. During Downtown Commission meetings he has rarely seen a project that was reviewed by the Downtown Commission that did not come out better and get not get buy-in from the developer. Several are good suggestions that don't cost anything. Again, City Council can require mandatory compliance, but he felt the ordinances in this process allow you to put faith in the review processes City Council has already established. We also have some very detailed guidelines, including shadow studies in the UDO. Council spent a long time working on those and incorporating them into the ordinances.

When Councilman Hunt asked Mr. McKibbon if he would commit to mandatory compliance of the downtown design review, Mr. McKibbon said that he hoped Council has seen his projects before and what others have said about his projects. He said they do what they say they will do. If this is a condition, he would want to make sure that their due diligence period is extended until they can decide if this is too erroneous and if it is that they can drop the project.

Councilman Hunt was under the impression that the development agreement would be drafted after the downtown design process and it seemed to him that we have a sales contract now that will refer to the development agreement. He noted that the development agreement is subject to negotiation and approval by this Council. Relative to the mandatory compliance with the downtown design review, he suggested that we give general policy direction to staff that Council wants to see that reflected in the development agreement when it is drafted. He would be willing to see a negotiation of the development agreement ultimately handle that. It is a real goal of Councils to expect to see that compliance. Also, based on their shadow study that if there is one or two days that we defer that to the development agreement.

City Attorney Oast said that the way the process is structured, the development agreement will not come back to City Council for final approval. It will incorporate all the various approvals from the Downtown Commission, the Planning & Zoning Commission and the Technical Review Committee.

Councilman Hunt would be more comfortable if Council has the opportunity to approve the development agreement. City Attorney Oast said that we have a commitment to a particular kind of conceptual design and a commitment to follow Council's ordinances and processes in getting the project approved. Those approvals would then be incorporated into a development agreement that would bind the developer to build in accordance with the approvals and they would become contractual matters. The concern that he had about bringing the development

agreement back to Council is that it might not get approved. The developer would be a year in the process and then there is no basis to move forward. We do have built into the contract the ability to review all construction contracts and all financial commitments in order to verify to the extent that we can that the project will get done. And we have the ordinances to rely on to ensure that it will get done in the way that the project is presented to you tonight – they become contractual matters. If Council wants to see the development agreement once it's done, they can.

When Councilman Hunt asked the McKibbon Hotel Group if City Council approving the development would be reasonable to them, Mr. Wyatt Stevens, attorney representing McKibbon Hotel Group, said it sounds reasonable on its face and if they would be dealing with the same Council and it was 2 weeks from now, it would be no problem. However, if this comes back before a different Council it's open up for another entire public hearing and that is not something any developer wants to agree with. They would certainly prefer that the development agreement not have to come back before Council for that kind of approval. He believed that the process has been set up so that's not necessary. He felt Council's concerns can be addressed by the Downtown Commission and City staff to make sure the development is done correctly, taking the politics out of it.

Councilman Hunt said that he hoped to achieve as much compliance with the downtown design review guidelines and not subject the development agreement to another Council vote.

Mayor Bellamy said that if this was privately owned property this would have gone through with some conditions but basically without any problems. She recalled reviewing privately owned projects where we would go over stormwater, sustainability, fencing, trees, how many public meetings were held, what were the neighbors concerns, what the traffic count was, what the ingress and egress to the property is, light spill-over, etc. and that was the developer's own land. From her prospective, part of the problem with this project is this is public land. This process has eroded public trust and once public trust is eroded, it is very difficult to get back. She felt these items should have been covered in a staff report. This is the only time Council has to review the project. This project has been going on for years and there has been no Council update. In her opinion, it wasn't until the letter from the Basilica pushed it to this point. She did not believe that a park is the best use for the land. We cannot afford it, noting the years it has taken for the Reed Creek Greenway, our commitment to Overlook Park and the Wesley Grant Sr. Southside Center. We haven't really dealt with the reality that the downtown residents have complained about some the issues in this part of downtown dealing with homelessness, vagrancy, graffiti, etc. The reasons why we don't have benches in that area is shop owners have complained about people sleeping on sidewalks impeding the ability for people to walk. A park is not the best place for that area. She agrees that it's important that we get this right. She didn't believe we have got this right. We continue to go forward without the public being a key part. People say that the Downtown Master Plan was guiding this. If that was the case we should have set a plan in place that it was transparent that this is what is happening now and the community could speak. We would have told them what we are going to build on this property, how it will move forward, that the City was still in talks with McKibbon, and their deadline. That didn't happen. She felt we should have had a good timeline with an open process. For us to say the current drawings are what we are approving, is saying that we won't take into account any public comment out of the meeting with the Asheville Design Center. This is the only time City Council will see this project. Going forward, and hearing the comments, it looks as though this will pass, but she felt we did not do this right. She believes there are opportunities that we missed and staff did not let people know. She hoped for an update on the other projects that are City-owned. Contrary to what has been said that this money has to go directly to affordable housing, the way our current formula is for the Housing Trust Fund, 30-40% of that money goes to transit. She cannot support the motion.

Councilman Davis said that this is consistent with the Downtown Master Plan, which Council adopted. We all have apprehensions about this and are putting a lot of faith in the people

who serve on our advisory boards. He did not want to see mandatory compliance, especially at this late in the game.

The amended motion made by Councilman Hunt and seconded by Councilman Smith carried on a 4-2 vote, with Mayor Bellamy and Councilman Bothwell voting "no" and Vice-Mayor Manheimer being recused. Said adopted amended motion reads: Adoption of Resolution No. 12-214, approving the sale of property located at Haywood Street and Page Avenue in downtown Asheville to McKibbon Hotel Group for economic development purposes, with the three conditions currently listed in the resolution and the following conditions: (1) traffic management plan; (2) McKibbon Hotel Group entertain public input in at least one session, that includes the Asheville Design Center collaboratively and that McKibbon, in good faith, will entertain reasonable suggestions to improve the design of the hotel based on public input and that the City won't unreasonably withhold our agreement should there be reasonable design suggestions that seem viable; (3) McKibbon shall retain a qualified geotechnical engineer and that during construction McKibbon Hotel Group follow the directions of that engineer and use best practices to ensure no seismic damage to the surrounding properties; (4) McKibbon Hotel Group not only simply allow for a plaza to be built, but ensure that their design in their development and construction techniques actually facilitate in a positive way to ensure that a plaza can be built. Councilman Smith accepted this amendment; (5) staff have another MAI appraisal by a different appraisal firm than the first one and based on the results of the second appraisal that the purchase price be set at the higher of the two appraisals; and (6) the design that the McKibbon Hotel Group would implement is the current drawings presented at this meeting, exclusive of the inclusion of the plaza.

**RESOLUTION BOOK NO. 35– PAGE 85**

At 9:23 p.m., Mayor Bellamy announced a short recess.

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**A. BOARDS & COMMISSION**

Regarding a vacancy on the Americans with Disabilities Compliance Committee left by Ms. Teresa Foster-Moorefield, it was the recommendation of the Boards & Commissions Committee, and the consensus of Council, not to fill the vacancy due to the "inactive" status of the Committee.

**RESOLUTION NO. 12-215 - RESOLUTION APPOINTING MEMBERS TO THE HUB COMMUNITY ECONOMIC DEVELOPMENT ALLIANCE**

Councilman Davis, member on the Boards & Commissions Committee, said that this is the consideration of appointing members to the HUB Community Economic Development Alliance.

The terms of Cheryl McMurray and Scott Dedman, members of the Alliance expired on August 22, 2012.

The following individuals have applied for a vacancy: Antonio Hinton, Kelly Erin-Spinney, Grant Millin, Sarah Nunez, Kimberly McCall and C. Jerome Jones.

It was the consensus of the Boards & Commissions Committee to appoint Sarah Nunez (who the Alliance recommended) and C. Jerome Jones.

Councilman Pelly moved to appoint Sarah Nunez and C. Jerome Jones to each serve a three-year term respectively, terms to expire August 22, 2015, or until their successors have been appointed. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 91**

**RESOLUTION NO. 12-216 - RESOLUTION APPOINTING AN ALTERNATE TO THE NOISE ORDINANCE APPEALS BOARD**

Councilman Davis, member on the Boards & Commissions Committee, said that this is the consideration of appointing an alternate to the Noise Ordinance Appeals Board.

The following individuals applied for the vacancy: James Reato, Jessica Byrd and Elizabeth Franks.

It was the recommendation of the Boards & Commissions Committee to appoint Elizabeth Franks.

Councilman Pelly moved to appoint Elizabeth Franks as the alternate to the Noise Ordinance Appeals Board to serve a three-year term, term to expire July 1, 2015, or until her successor has been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 92**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mayor Bellamy said that the Interim Business Improvement District (BID) Board has requested that the continuation of the public hearing on the BID scheduled for September 25, 2012, be continued to October 9, 2012, due to Vice-Mayor Manheimer's anticipated absence at the September 25 meeting. It was the consensus of Council to direct City Clerk Burleson to note on the September 25 agenda that Council expects to continue the public hearing until October 9, 2012.

Rev. Lisa Landis alleged (1) that Flag Code prohibits fringing on the US Flag hanging in the Council Chamber; and (2) that in May 24, 2011, minutes there is no mention that City Council granted District Attorney Ron Moore's special treatment to hire Blueline to perform the Asheville Police Department evidence room audit. Mayor Bellamy said that Mr. Moore did not ask the City to hire Blueline and will ask City Manager Jackson to respond to the flag allegation and City Clerk Burleson to research the Council minutes regarding Mr. Moore's comments on the contract, with both responses sent to City Council and Rev. Landis.

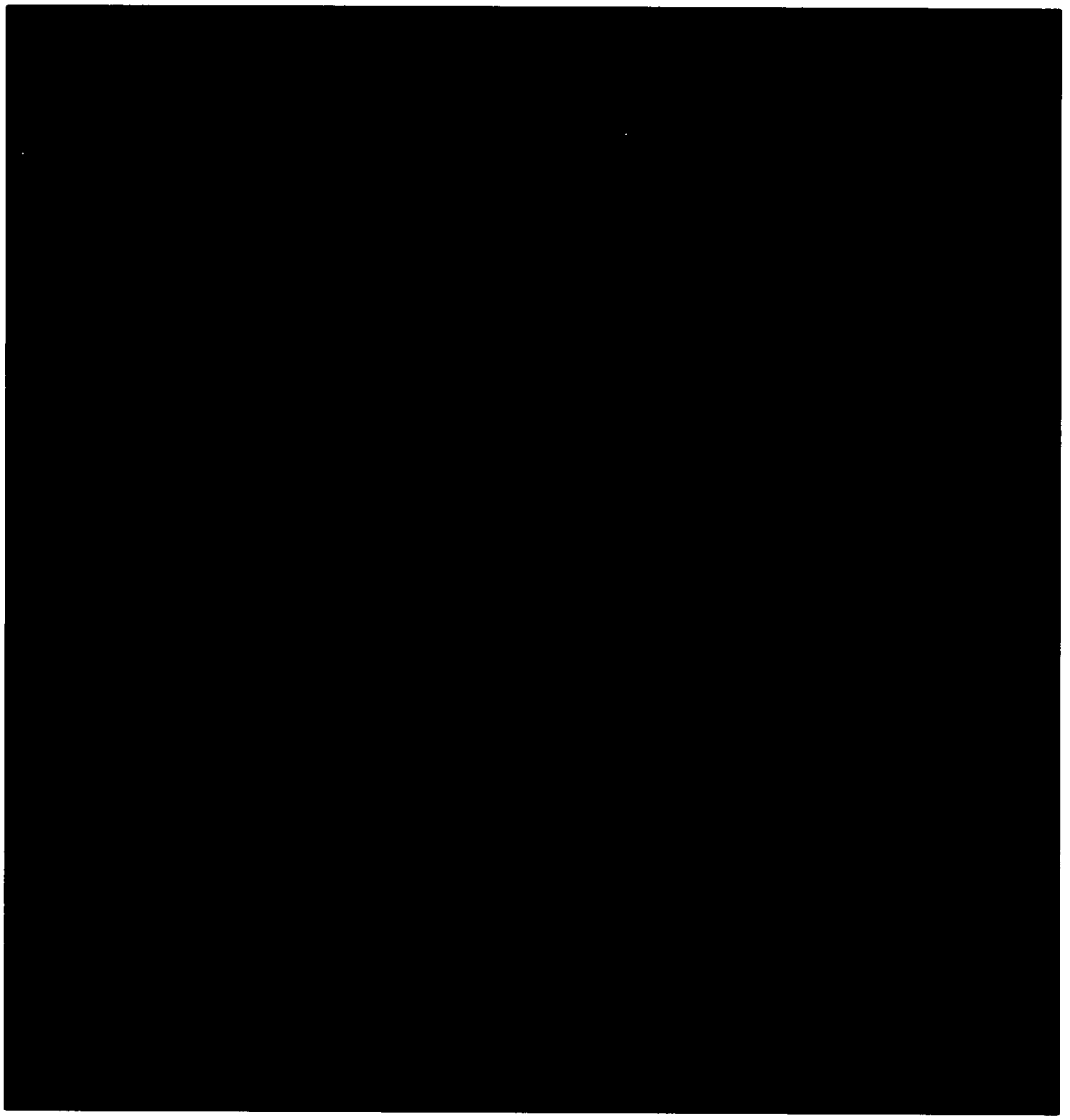
In response to Ms. Judy Strong, City Manager Jackson said that he would e-mail Ms. Strong information regarding the traffic study on Charlotte Street.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 9:36 p.m.

Magdalen Burleson — Jan Bellamy

CITY CLERK — MAYOR



# BUNCOMBE COUNTY

# CITY OF ASHEVILLE

# CITY COUNCIL

# MINUTES

# VOLUME: 90

# (SEPTEMBER 18, 2012 – AUGUST 13, 2013)

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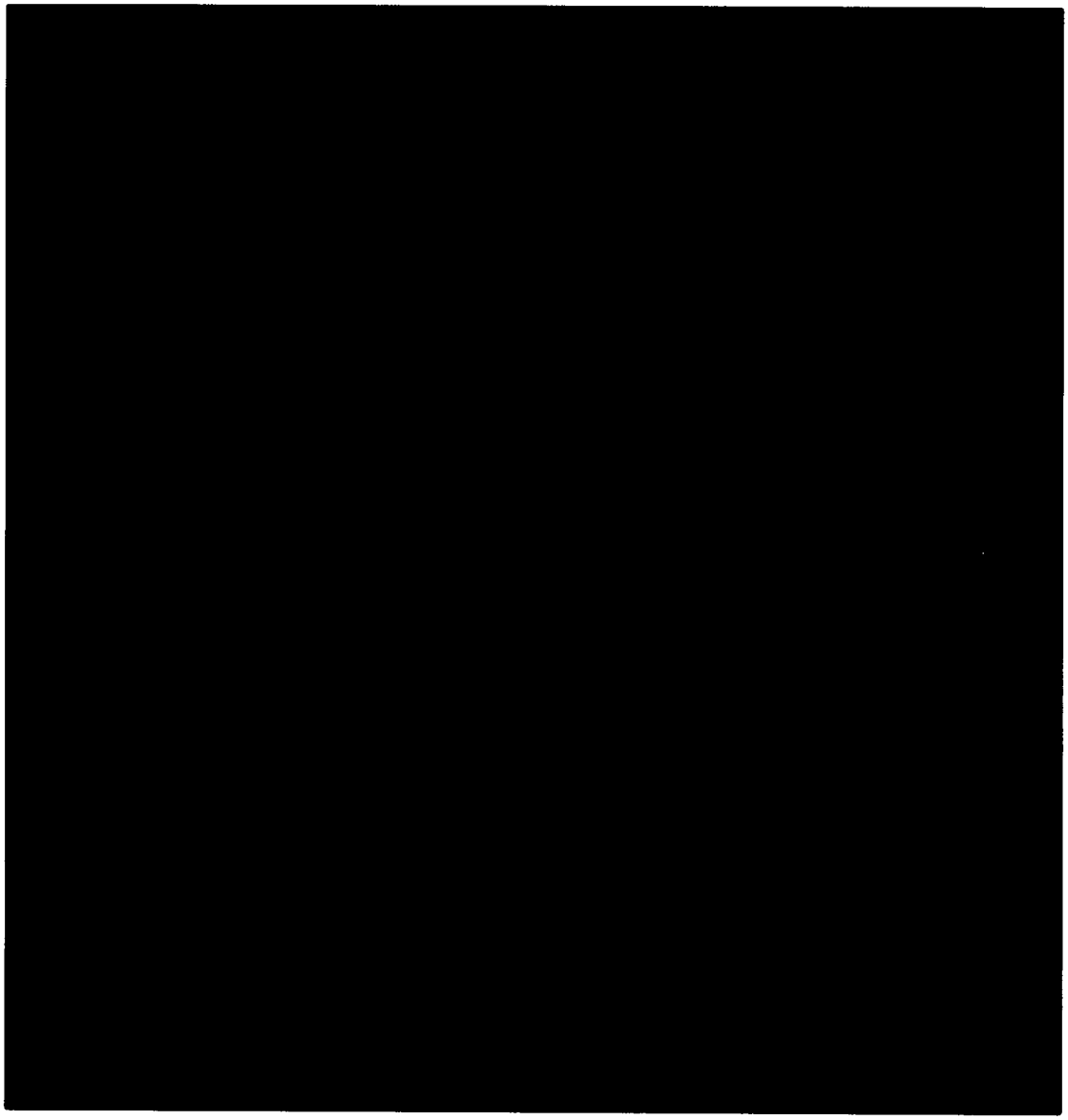

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Tuesday – September 18, 2012 - 1:00 p.m.
US Cellular Center – Banquet Hall

Special Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson (Absent: Councilman Marc W. Hunt)

Present: Representative Susan C. Fisher and Representative Chuck McGrady (Absent: Senator Tom Apodaca; Senator Martin L. Nesbitt Jr.; Representative Patsy Keever; and Representative Tim D. Moffitt)

Mayor Bellamy called the meeting to order at 1:00 p.m. in the Banquet Room of the US Cellular Center and invited the public to view the renovations of the US Cellular Center. She thanked Representatives Fisher and McGrady for attending. She said that the purpose of this meeting will be to hear our legislator's expectations of good faith negotiations arising out of the Legislative Study Committee recommendations.

Water Resources Director Steve Shoaf gave a brief informational update on the progress relating to the recommendations of the Legislative Study Committee ("Committee") as follows:

**A. Background.** The Legislative Research Commission is the general purpose study group in the Legislative Branch of North Carolina State Government. In September 2011, the Commission received authorization to appoint subcommittees to study various matters. Among these committees was the Metropolitan Sewerage/Water System Committee, which was tasked to study "whether requiring large cities that have a municipal water system and that are located entirely within a Metropolitan Sewerage District to convey that water system to the district will improve the efficiency of providing public services".

During the winter and early spring of 2012, the Metropolitan Sewerage/Water System Committee held four public hearings to consider issues regarding water and sewer services in Buncombe and Henderson Counties. At their April 19, 2012 meeting, the Committee adopted a final report and recommendations.

**B. Recommendations and Related Actions.** Since the finalization and submission of the Committee report, the City of Asheville has undertaken several actions pursuant to the Report's recommendations. The Report's recommendations and related actions are listed below. In addition to this brief report, staff will present on this topic in further detail.

**Recommendation 1**

The Committee recommends the Metropolitan Sewerage District Act be amended to: (1) Reflect population shifts in single-county districts; (2) Modify representation in multicounty districts; and (3) Allow metropolitan sewerage districts to exercise the same authority as metropolitan water districts.

*Recommendation 1 Actions:*

- House Bill 1009, MSD Amendments, became law on August 03, 2012.

**Recommendation 2**

After careful consideration of the information presented, the Committee recommends merging the Public Utility Water System with the Metropolitan Sewerage District of Buncombe County. The benefits of combining the two utilities are undeniable. The benefits include, among numerous others, the following: (1) Each utility essentially serves the same residential, commercial and industrial customers; (2)

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Wastewater volumetric charges are directly linked to domestic water metered consumption; (3) Treatment of raw potable water and wastewater requires similar expertise, and similar interaction with Federal and State Authorities; (4) Economies of scale can be achieved in the areas of administration, planning and engineering; and (5) Single location for water and wastewater availability and planning.

The Committee recommends that the 2013 Session of the North Carolina General Assembly consolidate the Public Utility Water System with the Metropolitan Sewerage District of Buncombe County. Should the interested governments craft their own solution for consolidation, which achieves all the objectives of the Committee, before the 2013 North Carolina General Assembly convenes, due consideration would be given to the local plan. Action will not be taken if the parties are engaged in good-faith negotiations on this matter.

*Recommendation 2 Actions:*

Since the finalization and submission of the Committee report, the City of Asheville has undertaken several actions pursuant to the Report's recommendations.

- The City has extended the time for fulfilling the condition on the 137 acre property on Brevard Road conveyed to Henderson County pursuant to the 1995 Water Agreement, such that the reversion of the property will not occur until 2014.
- The City Manager has met with the Henderson County Manager to initiate discussions regarding continuation and expansion of water service in Henderson County.
- The City has been working with MSD and on its own to gather and analyze information on the two systems and on other public utility systems within the respective service areas of each, and to review and analyze various models for consolidation or merged operation of a regional system.
- The City has established various work groups to ensure these negotiations continue in an effective manner. These workgroups include:
    i. Oversight Committee: executive-level meetings to oversee and coordinate the progress of workgroups.
    ii. Financial Analysis: to study the financial impact to the City of Asheville under various merger scenarios.
    iii. Internal and External Communications: to ensure transparency and public availability of information throughout the study process.
    iv. Asset Value/Fair Compensation and Governance Models: contracting with Raftelis Financial Consultants to review methods of valuing applicable City assets and governance options for a merger.
    v. MSD Merger Study Relations: to track progress of the merger study
- The City has sought guidance from state legislators on how best to fulfill the expectations of the Study Committee.
- The City has extended an invitation to local governments in and around Buncombe County regarding participating in the review process for a regional water system.

**Recommendation 3**

The Committee recognizes the efforts of the Conservation Trust for North Carolina in protecting the drinking water in and around Asheville. It recommends that the Conservation Trust for North Carolina continue to work with the City Asheville as the parties consider clarifying the 1996 Asheville Watershed Conservation Easement

*Recommendation 3 Actions:*

- City staff have undertaken a review of the 1996 conservation easement that is currently in place with respect to the North Fork and Bee Tree Watershed property, and have met with a representative of the Southern Appalachian Highlands Conservancy to identify ways in which the easement may be clarified and amended in the interests of all parties.

- The City has engaged outside counsel to review the conservation easement to address policy and legal issues related to implementation of the easement.

Vice-Mayor Manheimer said that she and Councilman Pelly serve on the Metropolitan Sewerage District so they hear MSD's progress. The MSD Board has appointed Mr. Al Root (Mayor of Weaverville) as the City/MSD liaison for purposes of engaging in the negotiations, noting that Mr. Root is also Chair of the MSD Planning Board that oversees MSD's study. She has met with Mr. Root to talk about their expectations and plans to meet with him again in the near future.

Representative Fisher said that Representative McGrady is a member of the Legislative Study Committee and may speak out of turn if she gave any information based on what their work is.

Representative McGrady said that the Legislative Study Committee has ended. It has finalized its report and won't meet again until January of 2013. Two of the three recommendations have been taken care of - Recommendations 1 and 3. The heart of the Committee's Report is Recommendation 2 and understands there continues to be a difference of opinion as to whether there should be a combination of our water and sewer infrastructure and governance. The Committee came to the conclusion that it did. When we heard from a wide range of officials from cities, towns and counties that they were not excited about the combination but they consistently asked that if the Committee was going make that recommendation to not impose it but to give them an opportunity first to talk amongst themselves to see if they can work this out. The Committee took that request from local governments and said they wouldn't do anything this year. It sounds like the City of Asheville, MSD and other local entities are proceeding in those discussions. He was glad the studies are occurring because if one of them concludes that it would be a wildly expensive undertaking, then the next General Assembly can take that into account and look at the issue again, taking into account what the logic is, the economic impact, the environmental impact, and a host of other issues. He was particularly interested in the ongoing discussions with other local government entities, since a lot of the public discussion is focused on the water system run by the City of Asheville, but there are other water systems in the larger area. We have a consolidated sewer system but it a multi-county entity. He said some of that discussion will wait until the ongoing studies have been completed. The bottom line is that if there isn't a massive change in personnel on the General Assembly or something that turns up in these studies that suggests that the conclusion of the Committee was wrong, his expectation would be that a bill would be introduced to accomplish what was recommended by the Committee.

Representative Fisher understood that the only part of the study that is going on between MSD and the other area water systems, the only area that this will affect is Asheville. She understood that if the studies don't result in a City/MSD merger, then the legislature would introduce a bill that would dictate a merger. Representative McGrady said that there will likely be a bill if there were no solutions put forward by local governments. The Committee anticipates a bill that would combine water and sewer.

Representative Fisher's concern is that the City and MSD are concerned that they are exhibiting these good faith negotiations and it almost sounds like it doesn't matter how much good faith there is around all of these activities, there will probably still be a bill introduced, depending on the make-up of the legislature, that would merge the systems. Representative McGrady said he thought there will be a bill introduced (if only a placeholder), but didn't anticipate being the legislator that introduces it to effect what the Committee set forth. The fact is that the water system run by the City of Asheville is the predominant water system and that is why it's natural that the City of Asheville and MSD are negotiating. He expected that other municipalities that are connected to the City of Asheville are using that same water should be part of whatever discussions are going forward.

Mayor Bellamy said that the City has reached out to the other municipalities to talk about the consolidation, but she didn't think the other municipalities realize that this is inclusive of all the systems. Some officials do not want to participate in these discussions. She said the City and MSD are doing its due diligence to see what this will look like on our budgets, our systems and our operations but she is concerned that the system will be consolidated regardless of the input of all the players at the table and regardless of the impact to our ratepayers, taxpayers and citizens of Asheville.

Representative McGrady said that if the other municipalities determine they don't want to be a part of discussions they are taking a risk because the Committee is recommending some sort of combined water and sewer. It is not absolutely clear in the report, and he didn't think there was any intention to be clear in the report, exactly what the parameters of that water/sewer system might be. Certainly the MSD model has worked on the sewer side. He reiterated that unless there is a significant change in personnel of the General Assembly (because the incoming General Assembly is not bound by the report issued by the last General Assembly) or some horrible impediment that wasn't anticipated, the Committee will introduce a bill.

Mayor Bellamy said that Asheville needs to try to continue to reach out and be more inclusive of our process. We will continue to do an analysis on the impact on the City, its citizens and rate payers.

Representative McGrady said that if the City can strike a deal with the adjoining local government entities and MSD that makes sense and is consistent with the report issued by the Committee, he assumed that any legislation that would be introduced would be consistent with an agreement that the City might reach.

When Mayor Bellamy noted that on the November ballot we are asking our citizens of whether we should lease or sale our water system, she asked for Representative McGrady's thoughts. Representative McGrady personally questioned the wisdom of the whole referendum. He said these are difficult issues with a lot of history and asking what seems to be a very simple question. No matter what answer you get to that question, he was not sure it gets to the fundamental recommendation being made by the Legislative Study Committee.

Councilman Pelly noted that when MSD was created there were failing sewer systems, raw sewage flowing into the French Broad River and a pressing need for a combination of the sewer systems. He asked Representative McGrady how that carried over to the City's water system. Representative McGrady responded that the report speaks to the fact that the recent management of the Asheville water system is generally very positive, but it wasn't long ago we were in a very different place. Perhaps this is a lull that seems to occur in 10-20 years where maybe we can affect a regional consolidation system at a point in time when there is nothing driving it. He did not take issue with the City's management of the water system in the last several years. In fact, he commended the City on the management of the water system. He was on the Asheville-Buncombe Water Authority when it was dissolved and he understood why the City did what they did at that point in time.

Mayor Bellamy said that the things Asheville is being penalized for, in her mind, are the things that have happened in the past. To her, the present and the immediate future dictates that is over and we are running the water system in an effective and efficient manner. We have made investments in the system, stopped leakages, have a long-term capital improvement plan, are transparency, have website updates, living within the Sullivan Acts, etc. She couldn't understand why Asheville is still being penalized for things that happened in the past. Our water system is recognized by the state as a leader ranking ISO 14000 and yet the law is taking our system away.

Councilman Davis said that after attending the Committee meetings, and in all due respect, he felt the report by the Committee was a disingenuous process. He felt that part of the reason we don't have the other municipalities at the table is that they are scared and want to stay as far away from this process as they can. When the legislature takes our water system from us, it will add an incredible layer of cost. We are fixing the system with a regular schedule of rate increase and felt that part of this was brought about we started talking about equities in water bills and today we don't have the huge water users. He felt the solution everyone is hunting is in front of us.

Representative Fisher understood Representative McGrady say that he would hope that whatever comes out of the study, if there is good faith, will be included in whatever bill is introduced. She offered that no matter what happens, she will watch the bill as it moves forward to see that it incorporates the good faith pieces of the study when all of this work is done.

Representative McGrady said the Committee report is what it is. He understands the City Council positions put forward, but the fact is the recommendation has been made and you've now begun to go through a process. He didn't know what the nature of a regional water/sewer authority might be. He felt the City needed to come forward with a proposal consistent with the results of the study that make sense. Personally, his way of operating is being as transparent as he can be. When we were dealing with the Airport issue, he went out of his way to make sure there was no financial impact on the City, which would have been a very easy thing to overlook. The bottom line is that we do need to do what is right for our citizens, noting there is more than just the citizens of the City of Asheville. He hoped the various local governments and MSD can be engaged in discussion that moves the ball forward. If while studying the issue you come across some massive impediment that wasn't anticipated by the Committee, next year is a new year. All the bills introduced this year are gone. This is just a Study Committee report and there are many reports issued by the General Assembly that don't get executed, but there are also a lot of them that are a multi-year process.

Councilman Bothwell said that Representative McGrady presents the information reasonably, but from our side of it, it seems we are told what the outcome of these discussions will be, which makes actual negotiations pretty hard. He noted that this has already imposed extra expense on the taxpayers of Asheville and the ratepayers of MSD in terms of their studies. The state has not talked about compensating us for the costs already incurred.

When Councilman Bothwell asked how many other systems across the state will be consolidated if moves bill forward, Representative McGrady said he was not aware of any other water and sewer consolidation that is being studied by the General Assembly at this time.

Councilman Smith said that the City has been asked to make these good faith efforts in response to a mechanism that we didn't necessary perceive as being in good faith in and of itself. It is a challenge for us. He verified (1) if facts emerge that there are prohibitive costs to a merger that the entire matter may be reconsidered; (2) the new General Assembly will not be bound by the last General Assembly; and (3) there aren't currently other municipal water systems that are under threat. He said that one of the reasons we have had a hard time operating with the sense that this was a fair process was that the original bill filed and the findings of the Study Committee were the same. It certainly seemed to be pre-determined.

When Councilman Smith asked if Representative McGrady could talk about the 2007 Superior Court ruling that explicitly discusses Asheville's ownership of the water system, he replied he was not prepared to talk about that at this time.

Representative McGrady said that the original Legislative Committee charge was actually larger than the City of Asheville and when the Committee was initially put together, the thought was we aren't just looking at the City of Asheville, but a broader set of issues. Because the City of Asheville's issues were so complex the Committee only looked at the City of Asheville. The discussion about how we manage our water is going to be the cutting edge issue for the state over the next 50 years, so he would expect the types of questions being asked here, with respect to this system, may well occur in other systems.

Councilman Smith asked Representative McGrady to further explain his statement that if the composition of the General Assembly is changed that he would not be the one to introduce the bill. Representative McGrady said he has not sat down with Senator Apodaca as they tend to work together because they have overlapping districts. He didn't introduce the bill that was originally introduced and he didn't anticipate introducing the bill that might accomplish what the Committee set forward. He hasn't seen any bill and was not aware of any bill that has been drawn up. His impression is that everything is currently on hold, allowing for the process to proceed, get past the next set of elections, and sometime early next year a legislator might seek to put together a bill. If a bill gets put together, and he is not the guy that anticipates doing that, if it's one that is acceptable to him, he might well co-sponsor it. He does not anticipate being the leader of the charge as he has other agenda items that are a little higher.

Mayor Bellamy said one of the reasons why she wanted to talk with our legislators in public is because this is a public process. It is a bill that has been adopted, but not signed into law. She wished other legislators could have attended. She felt it was important for the citizens to hear why our legislators felt like House Bill 1009 was moving forward and that it would impact not only the City of Asheville but other municipalities in our community. All the data on this process can be found on the City's website. She again thanked Representatives Fisher and McGrady for attending and hoped they would be willing to meet again as the process moves forward.

Representative McGrady appreciated the very public process as well. He explained why the other legislators were unable to attend this meeting. He wanted everyone to understand that he was speaking as only one member of the General Assembly.

Mayor Bellamy thanked Representative Fisher for her work on getting Session Law 2012-119 enacted which adjusted the boundaries of Woodfin and Asheville in the area of UNC-Asheville.

Representative Fisher appreciated Asheville's transparency and looked forward to hearing move as the process moves forward.

Mayor Bellamy adjourned the meeting at 2:05 p.m.

Magdalen Burleson
City Clerk

Mayor

Tuesday – September 25, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Esther E. Manheimer (Yom Kippur)

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Pelly gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF THE ASHEVILLE TOURISTS WINNING THE 2012 SOUTH ATLANTIC LEAGUE CHAMPIONSHIP**

Mayor Bellamy was pleased to recognize Mr. Brian DeWine, President of the Asheville Tourists, Mr. Larry Hawkins, General Manager of the Asheville Tourists, and the entire Asheville Tourists team in winning the 2012 South Atlantic League Championship. Mr. Hawkins proudly presented their trophy, provided Council with their Championship T-shirts and thanked City Council for their support.

**B. PROCLAMATION PROCLAIMING OCTOBER, 2012, AS "FIRE PREVENTION MONTH"**

Mayor Bellamy read the proclamation proclaiming October, 2012, as "Fire Prevention Month" in the City of Asheville. She presented the proclamation to Fire Chief Scott Burnette, who briefed City Council on some activities taking place during the month.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 11, 2012; AND THE SPECIAL MEETING HELD ON SEPTEMBER 18, 2012**

**B. RESOLUTION NO. 12-217 - RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AND, IF AWARDED, ENTER INTO A GRANT AGREEMENT WITH THE N.C. PARKS & RECREATION TRUST FUND FOR CONSTRUCTION OF THE DR. WESLEY GRANT SR. SOUTHSIDE CENTER**

Summary: The consideration of a resolution authorizing the Mayor to apply for and, if awarded, enter into a grant agreement with the North Carolina Parks and Recreation Trust Fund for construction of the Dr. Wesley Grant, Sr. Southside Center.

Funds are available through the North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation in the North Carolina Parks and Recreation Trust Fund (PARTF) to assist with the development of parks, recreational facilities, and greenways. The City of Asheville wishes to submit a grant application not to exceed $500,000. If awarded,

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grant funds will be used to reimburse the City of Asheville for future expenses related to construction at the Dr. Wesley Grant, Sr. Southside Center.

The grant application requires a dollar for dollar cash match not to exceed $500,000. The cash match is available through a combination of funds currently budgeted in existing approved capital projects.

The development of the Dr. Wesley Grant, Sr. Southside Center is one of the top capital project priorities for the city in the Parks, Recreation & Cultural Arts Department. The first part of the Cultural Phase was completed in October 2011 consisting of an auditorium, three classrooms, office, storage, spray ground mechanical room, restrooms and parking.

The next construction in the Cultural Phase includes the spray ground, playground and a section of the Town Branch Greenway. The PARTF grant application will support construction of these elements.

The construction concept plan for the Dr. Wesley Grant, Sr. Southside has been endorsed by the Recreation Advisory Board. A public input session regarding the project will be held with the community prior to submitting the grant.

This action complies with the City Council 2012-2013 Strategic Operating Plan in the area of Fiscal Responsibility in that it provides alternatives for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities. This action also complies with the Parks, Recreation, Greenways, and Cultural Arts Master Plan in that it increases department funding with alternative funding via grants and ensuring a high level of service in parks and facilities by addressing capital maintenance of existing parks and facilities to meet community standards.

Pro:

- If awarded, the grant will reimburse the City for future construction expenditures up to $500,000.

Con:

- The grant application process is competitive and a grant award is not guaranteed.

If awarded, the grant is for one-time facility construction cost at the Dr. Wesley Grant, Sr. Southside Center that will increase the budget not to exceed $500,000. This increase is funded by a grant from the State of North Carolina in the Department of Department of Environment and Natural Resources. As noted above, the grant application requires a dollar for dollar cash match not to exceed $500,000, which is already available through a combination of funds currently budgeted in existing capital projects. Thus, there is no impact to the City's General Fund budget.

City staff recommends City Council to adopt a resolution authorizing the Mayor to apply for and enter into an agreement for grant funds through the North Carolina Parks and Recreation Trust Fund not to exceed $500,000 for reimbursement of future construction costs for the Dr. Wesley Grant, Sr. Southside Center.

**RESOLUTION BOOK NO. 35 – PAGE 93**

**C. RESOLUTION NO. 12-218 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT BLUE RIDGE PRIDE**

**RESOLUTION NO. 12-219 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT SYMPHONY IN THE PARK**

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at Blue Ridge Pride on October 6, 2012, and Symphony in the Park on October 14, 2012.

- Blue Ridge Pride, Inc. has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at Blue Ridge Pride and allow for consumption at this event.

  Blue Ridge Pride will be held on Saturday, October 6, 2012 from 12:00 p.m. to 7:30 p.m. within the boundaries Pack Square Park's Roger McGuire Green, Reuter Terrace, City-County Parking Lot, and Spruce Street between College Street and Court Plaza as per the area limits referenced on the accompanying site map.

- The Asheville Symphony Society in conjunction with Arts2People has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at Symphony in the Park and allow for consumption at this event.

  Symphony in the Park will be held on Sunday, October 14, 2012 from 12:00 p.m. to 9:00 p.m. within the boundaries Pack Square Park's Roger McGuire Green, Reuter Terrace, City-County Parking Lot, and Spruce Street between College Street and Court Plaza as per the area limits referenced on the accompanying site map.

These actions have no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for Blue Ridge Pride, Inc. and Arts2People.

Con:

- Potential for public safety issues

There is no fiscal impact.

City staff recommends City Council adopt the resolutions authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Blue Ridge Pride and Symphony in the Park.

**RESOLUTION NO. 12-218 - RESOLUTION BOOK NO. 35 – PAGE 94**
**RESOLUTION NO. 12-219 - RESOLUTION BOOK NO. 35 – PAGE 97**

**D. RESOLUTION NO. 12-220 - RESOLUTION SETTING A PUBLIC HEARING FOR OCTOBER 9, 2012, TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH PLASTICARD-LOCKTECH INTERNATIONAL**

Summary: The consideration of a resolution authorizing a public hearing to be held on October 9, 2012, to consider an economic development incentive grant for Plasticard-Locktech International (PLI).

Plasticard-Locktech International (PLI) was founded in 1988 in Asheville, NC. From that beginning, PLI has grown to become the world's largest hotel keycard manufacturer and a leading specialty printer of plastic and paper products.

The company is planning a $4.6 Million expansion on its South Asheville campus and has requested consideration for a performance based incentive grant under the City of Asheville

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Economic Development policy. The company will create 42 new jobs within three years, with an average wage of $12.50 and offers comprehensive benefits to its employees. The City of Asheville is considering offering a performance-based grant totaling $67,000.

North Carolina state law requires a public hearing be held before an incentive grant can be officially awarded.

The economic development incentive grant for PLI supports the City Council's Strategic Operating Plan as it addresses multiple focus areas. Under the Job Growth and Community Development focus area, the project supports the Goal of creating more collaborative and effective working partnerships between the COA, the business community, and other key organizations to effectively manage the city's regulatory environment while accomplishing economic development goals by meeting the objective to support diversified job growth and small business development. It supports the goal of supporting a strong local economy by continuing to implement sustainable growth and development policies by promoting sustainable, high density infill development that makes efficient use of existing resources.

Pros:

- Performance driven grant that is distributed after job and investment is achieved;
- Supports job creation and capital investment in existing industry in Asheville;
- Supports development of an identified economic cluster in the City; and,
- Supports regional and state cooperation in the project.

Con:

- Grant is formulated based on use of 75% of value of property tax revenue for a 5 year period.

The project has an overall positive fiscal impact on tax revenues received by the city. Initially (during the grant period), the City will receive approximately 25% of the new incremental property tax revenues from the project. After 5 years, the City will henceforth receive 100% capture of new city taxes.

City staff recommends Council approve a resolution authorizing a public hearing to be held on October 9, 2012, on an economic development incentive grant agreement to support the expansion of PLI.

**RESOLUTION BOOK NO 35 – PAGE 100**

**E. RESOLUTION NO. 12-221 - RESOLUTION AUTHORIZING THE MAYOR TO MODIFY AN AGREEMENT WITH THE WNC REGIONAL AIR QUALITY AGENCY REGARDING COLLECTION OF PERMIT FEES**

**ORDINANCE NO. 4120 - ORDINANCE AMENDING THE FEES & CHARGES MANUAL INCORPORATING THE ASSOCIATED FEES**

Summary: The consideration of (1) a resolution amending the Interlocal Agreement with WNC Regional Air Quality Agency (WNCRAQ) to authorize the City of Asheville to collect permit fees on behalf of WNCRAQ; and (2) an ordinance amending the City's Fees and Charges Manual to incorporate the associated fees.

The City's Development Service Center (DSC), was created to streamline the customer service experience by bringing together regulatory activities from across numerous City and partner agencies to lead and manage plan review, permitting and inspection services.

An integral part of the one-stop permitting process has been cooperation with WNCRAQ. The DSC has been accepting applications for permits requiring WNCRAQ approval for several years. WNCRAQ has assessed a fee associated with their applications and has requested that the City collect such fees. Collection of such fees is consistent with DSC's one-stop permitting process. The City will remit the fees to WNCRAQ on a monthly base retaining up to 3% as an administrative fee.

This action supports the City of Asheville Strategic Operating Plan by leveraging internal and external partnerships and creating collaborative and effective working partnerships.

Pros:

- The City permitting process will include WNCRAQ application and fees in a one-stop permitting location.
- Customers may pay for all permit fees with one credit transaction or with one check rather than making separate payments or trips.

Con:

- Some customers may not recognize the additional fee is not associated with City of Asheville permits.

The fees associated with WNCRAQ permitting will generate between $90 - $150 in administrative fees per year.

City staff recommends City Council adopt (1) the resolution authorizing amendment to the interlocal agreement creating the WNCRAQ to collect the associated permit fees; and (2) the ordinance amending the City's Fees & Charges Manual to budget ordinance amendment to create an administrative fee for collection of the permitting fees for WNCRAQ.

In response to Councilman Smith, City Manager Jackson said that the bills would be itemized to show that this fee is being collected for the WNC Regional Air Quality Agency for clean air.

**RESOLUTION BOOK NO. 35 – PAGE 101**
**ORDINANCE BOOK NO. 27 - PAGE 462**

**F. ORDINANCE NO. 4121 - BUDGET AMENDMENT FOR THE WNC NATURE CENTER**

Summary: The consideration of a budget amendment in the amount of $88,593 for a grant from the N.C. Dept. of Commerce for the WNC Nature Center.

Each year the State of North Carolina in the Department of Commerce allocates funds to 25 to 30 member museums, science centers and nature centers in North Carolina. The WNC Nature Center is a member of the collaborative. Funds will be used to make improvements to the facility and animal exhibits at the WNC Nature Center.

The grant is intended to support the first phase of the 20/20 vision master plan for the WNC Nature Center. The funding from this grant will go towards supporting a new visitor's front entrance which was identified as the highest priority in the plan.

This action complies with the City Council 2012-2013 Strategic Operating Plan in the area of Fiscal Responsibility in that it provides alternatives for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities. This action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it increases department funding with alternative funding via

grants and ensuring a high level of service in parks and facilities by addressing capital maintenance of existing parks and facilities to meet community standards.

Pros:
- Provides funds to support capital improvements at the Nature Center
- Provides funds to enhance special projects and services to Nature Center visitors
- Provides funds to assist in fulfilling standards and maintaining Nature Center accreditation with the Association of Zoos and Aquariums

Con:
- None

The project budget for one-time facility improvements at the Nature Center will increase by $88,593. This increase is funded by a grant from the State of North Carolina Department of Commerce. Thus, there is no impact to the City's General Fund budget.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to accept funds from the North Carolina Department of Commerce and establish a budget of $88,593 for projects at the WNC Nature Center.

**ORDINANCE BOOK NO. 27 – PAGE 463**

**G. RESOLUTION NO. 12-222- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH HENDERSON COUNTY TO LEASE THE CNG VAN**

**ORDINANCE NO. 4122 - BUDGET AMENDMENT TO PURCHASE A CNG VAN FOR HENDERSON COUNTY'S TRANSIT SYSTEM**

Summary: The consideration of (1) a resolution authorizing the City Manager to enter into an agreement with Henderson County to lease the CNG van; and (2) a budget amendment, in the amount of $14,527, to increase the budget set to purchase a Compressed Natural Gas van for Henderson County's transit system, originally funded by the American Recovery and Reinvestment Act (ARRA) received by the City in March 5, 2009, Federal Register Volume 74, No. 42, page 9675.

As a result of the 2000 Census, the City of Asheville was reclassified from a non-urbanized area to an urbanized area with a population greater than 200,000 persons and now includes municipalities in Buncombe, Haywood, and Henderson counties. After the reclassification, Henderson County's transit system became part of the transit systems operating in the overall urbanized area. The Federal Transit Administration named the City of Asheville the designated recipient and as a result, the City of Asheville oversees all of the Federal funding administration. The City of Asheville and Henderson County have signed a sub-recipient agreement that specifies how the funds are disbursed. The City of Asheville is accountable to the Federal Transit Administration regarding the use of all Federal funds and owns all the capital items that Henderson County purchases with their share of the Federal funds.

The estimated total cost of the subject project is $95,368, $14,527 more than what was budgeted originally. Federal funds will provide $92,462, $80,841 are part of the ARRA apportionment and don't require a match; and $11,621 are covered with grant NC-90-X439; this grant requires a match of $2,906 provided by Henderson County. The City of Asheville performs all of the administrative tasks including the bidding process, requests for funding, review of documentation, and reporting. A State contract is in place and City staff will order the van as soon as the budget is amended.

This action complies with the current City Council 2012-13 Strategic Operating Plan within the fiscal responsibility focus area by operating the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- The CNG van will produce savings in maintenance and fuel costs.
- The Federal Transit Administration (FTA) provides 96% of the total estimated project cost.
- Henderson County provides 4% of the total estimated project cost.
- There is **no** cost obligation for the City of Asheville other than administrative expenses.

Con:

- The City of Asheville is responsible for administrative expenses including staff time to oversee the project.

The total estimated project cost is $95,368, with 96% or $92,462 coming from Federal funds, 4% or $2,906 coming from Henderson County. There is no direct fiscal impact to the City of Asheville, however the City's cost of administering the project is not recovered.

City staff recommends that City Council approve a resolution authorizing the City Manager to enter into an agreement with Henderson County to lease one CNG van and to adopt the associated budget amendment.

**RESOLUTION BOOK NO. 25 – PAGE 102**
**ORDINANCE BOOK NO. 27 – PAGE 465**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. UPDATE ON THE 10-YEAR PLAN TO END HOMELESSNESS

Ms. Heather Dillashaw, Homeless Initiative Coordinator, briefly updated City Council on the 10-Year Plan to End Homelessness. The chronically homeless statistics looking backward: 2006 – 134; 2007 – 105; 2008 – 181; 2009 – 180; 2010 – 187; 2011 – 75; and 2012 – 80. The 2012 Point-In-Time count shows 523 total homeless, approximately 100 were veterans and 423 formerly homeless are in permanent supportive housing. The average rent in Asheville is 717 for a one-bedroom without utilities. The fair market rent for Fiscal Year 2012 is $617 for a one-bedroom including utilities. The Housing Authority has 461 one-bedroom units available, 877 on one-bedroom waiting list, and 119 annual turnover rate. She provided good news statistics for the Respite Beds Project, the SOAR Project, HUD-VASH, SAMHSA Agreement and ESG Funds Transition.

For Project Connect 2012, 200 were served, 49 City and Mission Hospital volunteers, 30+ providers and VA Stand Down.

Next steps include the Housing Crisis Response System (1) coordinated intake; (2) rapid re-housing; (3) jobs; (4) adequate medical and mental health care; and (5) housing for all.

Mayor Bellamy felt the beauty of what we are seeing today is because of the homeless network and the continuous looking at benchmark data and the cross-pollination of information sharing between the non-profits and for-profits.

Ms. Dillashaw responded to various questions/comments from Council.

On behalf of City Council, Mayor Bellamy welcomed Ms. Dillashaw in her new position with the City and looked forward to future updates.

**B. TREE COMMISSION UPDATE**

Mr. Bill Hascher, Chairman of the Tree Commission, briefly discussed the Asheville Tree Map; anti-tree topping and leaf collection; Bee City USA; planting lists; Alternative Compliance Subcommittee activity and Technical Review Committee seat; Tree Tenders Program and Blue Ridge Arborist Association; and appreciation of support for the City's Arborist Program.

Councilman Bothwell, current liaison to the Tree Commission, and Councilman Davis, former liaison to the Tree Commission, both expressed their appreciation for the dedication and work of the members.

On behalf of City Council, Mayor Bellamy thanked Mr. Hascher and the entire Tree Commission for their hard work on the Commission.

**C. ABC BOARD UPDATE**

ABC Board Chairman Jim Ellis briefly updated Council on their new staff; finances, and grants and education from outside agency funding.

General Manager Mark Combs then updated Council on their community alcohol education efforts (Clear Channel Radio Group, Prom Promise and discretionary funds); their updated website; and their focus on store appearance. Their goals and objectives will be focused on innovative alcohol education – "Drink Responsibly."

On behalf of City Council, Mayor Bellamy thanked Mr. Ellis and the entire ABC Board for their time and effort on the Board.

**D. WATER/SEWER MERGER UPDATE**

Project Manager Phil Kleisler updated City Council on the Water Resources process update from September 11-25, 2012. The internal financial analysis for Phase 2 is underway. At an MSD meeting today, it was noted by the consultants for MSD that a draft of the Phase I MSD study will be presented to the MSD Planning Committee in late October with the full and final draft being presented to the MSD Board on November 14. Internal communications consist of small and large staff meetings and legal communication. External communications consist of the project website and meetings with consultants representing MSD and the City of Hendersonville. There will be a progress report on the governance model on October 16 at 5:00 p.m. in the Council Chamber. Asset value is still ongoing with Raftelis. A joint meeting was held with our state legislators on September 18 in the US Cellular Center and a pending item is the invitation to area governments.

After Mr. Kleisler provided council with a request for information sheet, City Manager Jackson pointed out that these requests for information is exhaustive and time-consuming on both City and MSD staff. He said that because MSD has provided the City with 65% of the information we have requested, Raftelis is going to have to evaluate how far they can get in terms of their work on the financial side in time for the October 16 worksession.

After a brief discussion and because Representative McGrady felt that all area municipalities need to be participating in the good faith efforts, it was the consensus of Council to extend an invitation to all area municipalities that have water/sewer services to the October 16 worksession to hear firsthand what is happening and how they are part of this process. City staff can furnish them a copy of the legislation, the minutes of the September 18, 2012, meeting with the state legislators so they can see what Representative McGrady represented and some information about the City's consultant Raftelis. After that worksession, City Council can then invite them again to join in the good faith discussions between the City and MSD.

In response to Councilman Pelly, City Attorney Oast said there are several stand alone water systems in Buncombe County that are potentially covered including Woodfin, Black Mountain, Weaverville, Biltmore Forest, and possibly others. Councilman Davis felt that even water producers in the region like Hendersonville should be invited.

## IV. PUBLIC HEARINGS:

### A. CONTINUATION OF PUBLIC HEARING TO CONSIDER A MUNICIPAL SERVICE DISTRICT FOR DOWNTOWN ASHEVILLE (BUSINESS IMPROVEMENT DISTRICT)

At the request of the Interim Business Improvement District Board due to the absence of Vice-Mayor Manheimer, Councilman Davis moved to continue this public hearing until October 9, 2012. This motion was seconded by Councilman Smith and carried unanimously.

### B. PUBLIC HEARING TO AMEND THE 2012-13 ANNUAL ACTION PLAN TO DE-ALLOCATE $40,000 OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING FOR THE ON-TRACK HOME-BASE PROGRAM AND ASSIGN THOSE FUNDS TO CONTINGENCY

### RESOLUTION NO. 12-223 - RESOLUTION AMENDING THE 2012-13 ANNUAL ACTION PLAN TO DE-ALLOCATE $40,000 OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING FOR THE ON-TRACK HOME-BASE PROGRAM AND ASSIGN THOSE FUNDS TO CONTINGENCY

Community Development Director Jeff Staudinger said that this is the consideration of a resolution amending the 2012-2013 Consolidated Annual CDBG and HOME Action Plan regarding the OnTrack for Home Base Program. This public hearing was advertised on September 14 and 21, 2012.

OnTrack was awarded $40,000 in CDBG housing services funds to support staff and management costs for the HomeBase homelessness prevention program. In July, OnTrack informed the Community Development Division of its decision to discontinue the HomeBase program. On Track had originally "inherited" this program from another agency that discontinued operations. As On Track participated in the Homeless Initiative, and retooled what had originally been a renters' financial literacy assistance program to the Housing First model, it determined that other agencies were better suited to provide rapid rehousing and homelessness prevention assistance. This was a well-considered decision by that organization, as it examined the fit of this program with its mission and resources. OnTrack has assured the City and provided evidence that the program's existing clients have been given access to similar assistance available at other Asheville organizations. OnTrack continues to operate many other programs, including its CDBG funded Financial/Housing Education and Counseling Program. This decision does not affect that program, and CDBG funds remain allocated to its support.

As a result of this decision, On Track will not be granted $40,000 of CDBG allocated this year for that program. At this time, the Housing and Community Development Committee

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recommends placing these funds into contingency, as it considers the future disposition of these funds.

This action meets the Council Strategic Goals of Affordable, Job Growth and Community Development, as these funds are returned to the CDBG pool for future allocation to projects meeting these goals and relevant objectives.

Pro:

- The proposed action will enable the City to allocate CDBG funds for most effective programs to meet the needs of low and moderate income persons.

Con:

- Program clients who have developed a working relationship with OnTrack for these services will need to have their needs met elsewhere.

Because no contract was executed for the use of these funds, all of the CDBG funds allocated will be returned to the CDBG fund for future allocation. No City general funds have been allocated to this program.

Staff recommends that the 2012-2013 Action Plan be amended to allocate the $40,000 of CDBG funds originally allocated to OnTrack's HomeBase program to Contingency, for reserve and future allocation to CDBG eligible activities.

Mayor Bellamy opened the public hearing at 6:21 p.m. when no one spoke, she closed it at 6:21 p.m.

Councilman Davis said the Housing & Community Development Committee felt it would be prudent to hold the funds in Contingency at this time.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 12-223. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 103**

**C. PUBLIC HEARING TO CONSIDER A SIGNAGE PLAN TO ALLOW FOR THE INSTALLATION OF IDENTIFICATION AND WAYFINDING SIGNAGE TO BE LOCATED ON A PORTION OF THE PROPERTY LOCATED AT 110 LYMAN STREET**

**ORDINANCE NO. 4123 - ORDINANCE APPROVING A SIGNAGE PLAN TO ALLOW FOR THE INSTALLATION OF IDENTIFICATION AND WAYFINDING SIGNAGE TO BE LOCATED ON A PORTION OF THE PROPERTY LOCATED AT 110 LYMAN STREET**

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance approving a signage plan to allow for an off-premise commercial subdivision sign located at 110 Lyman Street. This public hearing was advertised on September 14 and 21, 2012.

The applicant is negotiating the purchase of a small 6,700 square foot portion of a larger, commercial property located at the corner of Lyman St. and Depot St. that is a little over an acre in size (PIN 9648.06-5506). The small subdivided portion would be located at the corner and

have frontage on both streets, while the larger remnant parcel would have frontage on Lyman St. only where the existing access is currently located.

The parent parcel was created in 1985 from the Housing Authority's disposal of many smaller lots that had originally been part of the East Riverside Urban Renewal Area. The properties appear to have been purchased and recombined into a commercial subdivision with five separate commercial properties. These lots were subsequently sold and developed for light manufacturing and include the following properties:

| | | |
|---|---|---|
| 110 Lyman St. | 9648.06-5506 | (subject property) |
| 120 Lyman St. | 9648.06-9462 | |
| 122 Lyman St. | 9648.16-3565 | |
| 121 Lyman St. | 9648.06-9697 | |
| 123 Lyman St. | 9648.06-5757 | |

In addition to the individual properties' signage, commercial subdivisions are permitted a separate sign, typically free-standing, identifying the subdivision and sometimes the tenants as well. The sign must also be located on either one of the commercial lots with an easement, or on common open space for the development. Normally, there is also an accompanying legal vehicle such as a deed or an easement that provides all the parcels some limited rights to the sign. In 1988, an easement was created for a new commercial subdivision sign to be placed on the property at 110 Lyman St., with rights conveyed to the other four property owners. This sign is currently located near the corner, on the portion of the property that the applicant is seeking to subdivide and purchase.

Subdividing the corner from the rest of the property effectively removes this portion of the property from the commercial subdivision and conceptual development plans require the removal of the sign to make way for a new mixed-use building. In order to respect the original easement, the applicant is seeking to relocate the existing sign but has not been able to find a location suitable to all the parties who desire to maintain wayfinding visibility from the nearby 5-points intersection. As an alternative, the applicant is proposing to install a new sign on the wall of their proposed building that would creatively provide identification and directional cues for those searching for the businesses that are part of the Lyman Hollow subdivision.

Analysis: The subject property is 1.13 acres, from which a small .154 portion is proposed to be divided off. The subject property is also part of a larger commercial subdivision of five separate lots totaling 8.56 acres, all zoned Commercial Industrial (CI). The *Unified Development Ordinance* (UDO) currently allows commercial subdivisions to obtain individual sign allowances for each lot that includes up to two business signs at 125 square feet each. In addition to this individual signage, a separate subdivision sign is also permitted and can be up to 60 square feet and, if free-standing, up to eight feet tall with a maximum of two faces.

The applicant is seeking to redesign and relocate the existing sign to the wall of their proposed building. While this building and portion of the property would not be part of the commercial subdivision, it would provide the desired visibility for the remaining businesses that cannot be seen from the main road intersection. The new building is proposed to be a mixed-use or multi-tenant building and would also be permitted up to 125 square feet of attached signage and separate individual tenant signage. This proposal seeks to simply add the commercial subdivision sign to what would normally be allowed for the building. No other special considerations are being requested.

Staff Findings: The stated purpose of allowing the consideration of a separate signage plan is as follows:

*The purpose behind this section is to permit creativity in sign design and placement to address site issues and constraints associated with topography, pedestrian-orientation, way-finding and other conditions unique to the subject development.*

This request, while modest, more appropriately represents the value of the signage plan application process. Through the creative placement of a sign, the applicant is able to provide valuable wayfinding to neighboring properties that would otherwise not be visible from the main intersection. The character and design of the sign would be complementary to the building but would also be distinct enough to not be confused with the signage for building itself.

Pros:

- Provides clear directional signage to an existing commercial subdivision.
- Does not result in a net increase in signage.

Con:

- Sign would be located off-site and may confuse some visitors.

Staff recommends that the signage plan for the Lyman Hollow Commercial Subdivision be approved, subject to the following conditions: (1) All signs shall meet the zoning district dimensions, setbacks, the site distance triangle requirements and all applicable building code requirements; (2) Any changes to the signage included in this plan may require a new review by City Council; and (3) All signs shall comply with the proposed standards and no exceptions or variances are permitted.

Mayor Bellamy opened the public hearing at 6:29 p.m.

Ms. Hedy Fisher, petitioner, explained their request and asked for Council support.

Mayor Bellamy closed the public hearing at 6:32 p.m.

Mayor Bellamy asked Ms. Tuch to look at an old manufacturing warehouse near this property to see if any action needs to be taken if it is abandoned.

Councilman Smith asked Ms. Tuch verify that the small lot to the north of this property encompasses the school property and is zoned Institutional.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Bothwell found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4123, to approve the signage plan for the Lyman Hollow commercial subdivision sign to be located at the development project located at the corner of 110 Lyman St. subject to the following conditions: (1) All signs shall meet the zoning district dimensions, setbacks, the site distance triangle requirements and all applicable building code requirements; (2) Any changes to the signage included in this plan may require a new review by City Council; and (3) All signs shall comply with the proposed standards and no exceptions or variances are permitted. This motion was seconded by Councilman Pelly and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE 467**

**D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO UPDATE OUTDOOR LIGHTING STANDARDS**

At the request of City staff, Councilman Bothwell moved to continue this public hearing until November 27, 2012. This motion was seconded by Councilman Pelly and carried unanimously.

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 12-224 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH POPE GOLF ASHEVILLE LLC FOR THE OPERATION AND MANAGEMENT OF THE ASHEVILLE MUNICIPAL GOLF COURSE**

Parks, Recreation & Cultural Arts Director Roderick Simmons said that this is the consideration of a resolution authorizing the City Manager to execute a Lease Agreement with Pope Golf, LLC (dba Pope Golf Asheville, LLC) for the purpose of operating and managing the Asheville Municipal Golf Course which is city-owned real property at 226 Fairway Drive, Asheville, NC.

On August 28, 2012 City Council at the formal meeting took the following actions: (1) City Council adopted a resolution authorizing the City Manager to enter into a seven (7)-year management agreement with Pope Golf, L.L.C to manage the operation of the Asheville Municipal Golf Course; (2) City Council authorized staff to offer a severance package to impacted employees who do not obtain employment in either another City position and/or a position with Pope Golf; and (3) City Council authorized the lease to be brought before City Council at its September 25, 2012, meeting.

The property at 226 Fairview Drive consists of approximately 121 acres and existing buildings and is located off of Swannanoa River Road across from the Recreation Park complex. The current uses of this property are: (1) The City of Asheville Parks, Recreation and Cultural Arts Department operates a Clubhouse/Pro-Shop, Maintenance Facility and 18-hole golf course for the general public use.

The proposed lease terms are as follows:

- Initial term of seven (7) years with the option to renew for one (1) additional three (3) year period, subject to the mutual consent of the parties.
- Tenant responsibilities: Installation of all improvements, subject to zoning standards. Must maintain cleanliness of property, improvements, clearing of debris.
- All utilities to be paid by the Tenant.
- Maintenance: All maintenance to be performed by Tenant.
- Mutual rights to terminate lease.
- Rental: As consideration for the lease, Pope Golf Asheville, LLC Inc. will pay to the City a flat fee of $72,000/year for the first three (3) years of the lease agreement. After the initial three years, the flat fee will be calculated as 10% of the average adjusted gross revenues (minus golf shop and food and beverage sales) earned during the first three years of the agreement. Pope Golf Asheville, LLC will pay the City an additional 1% if annual adjusted gross revenues are between $1,200,000 and $2,199,999. Pope Golf will pay the City an additional 2% if annual adjusted gross revenues are $2,200,000 or greater. Payments will be due quarterly.
- Standard provisions of all City leases (e.g. insurance, indemnity, etc.) will also apply.

The Notice of Intent to enter into a Lease Agreement with Pope Golf, LLC was published on September 14, 2012 in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the Lease Agreement is being requested

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On September 17, 2012, staff conducted a public meeting with citizens, community stakeholders and representatives of Pope Golf, Inc. in an effort for citizens to learn more about Pope Golf, Inc.

Pope Golf Inc. provided an overview of their company and information on their golf course operational philosophy. At the end of the presentation they took comments and allowed Citizens to ask questions about any concerns about the change in management of the Municipal Golf Course. There were approximately forty-five citizens and community stakeholders in attendance during the 2 hours meeting.

This action complies with the City Council Strategic Operating Plan of Fiscal Responsibility in that it supports a stronger, more prosperous community by making smart investments that accomplish lasting, tangible returns. It leverages an external partnership to enhance the City's financial commitment to master plan implementation, infrastructure maintenance, capital improvements and public facilities. This action also complies with the Parks, Recreation, Cultural Arts and Greenway Master Plan in that it maximizes the level of service available to the community by using partnerships.

Pros:

- Eliminate the general fund subsidy for golf course operations.
- Elimination of financial risk for the City.
- Provide a reliable funding stream to support maintenance and operation of the Municipal Golf Course.
- Sets the standards of operation to assure quality maintenance practices and meet community expectations.

Con:

- The City has no prior experience with private management of the course.

As consideration for the lease agreement, Pope Golf, LLC Inc. will make an annual payment to the City as outlined above.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute the lease agreement with Pope Golf Asheville, LLC. on behalf of the City of Asheville.

When Mayor Bellamy asked for public comments, none were received.

Mr. Simmons confirmed for Mayor Bellamy that the current tournaments that have a 10+ year history will continue to operate at the golf course; that all City staff at the Golf Course have been interviewed to potentially become Pope Golf employees; and that all covenants and restrictions are in place for this land to remain a Golf Course. Mr. Simmons pointed out that the Golf Course is still a City asset.

In response to Mayor Bellamy, Mr. Simmons reiterated that on September 17, 2012, staff conducted a public meeting with citizens, community stakeholders and representatives of Pope Golf, Inc. in an effort for citizens to learn more about Pope Golf, Inc. Councilman Pelly said that there were about 40 people in attendance and the meeting was very positive.

Councilman Smith pointed out that Pope Golf will pay the City a flat fee of $72,000 a year for the first three years of the lease agreement. After the initial three years the flat fee will be calculated as 10% of the average adjusted gross revenues. He said this is an agreement the City is entering with the knowledge that the City will be able to see some money returned for other purposes out of this initiative.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hunt moved for the adoption of Resolution No. 12-224. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 104**

**B. RESOLUTION NO. 12-225 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH BUNCOMBE COUNTY TO CONSTRUCT MULTIPLE WATER LINES WITHIN A ONE MILE RADIUS OF THE FORMER CTS FACILITY ON MILLS GAP ROAD**

Water Resources Director Steve Shoaf said that this is the consideration of a resolution authorizing the Mayor to enter into an interlocal agreement with Buncombe County to extend water lines to approximately 129 locations currently supplied with well water in the area of the former CTS Facility on Mills Gap Road.

For several years, Buncombe County has worked with residents living in the area of the former CTS Facility on Mills Gap Road. The well water of those residents may be impacted by ground water contaminates, including trichloroethylene, found near the former CTS Facility. The water filtration devices provided to the residents may not provide sufficient public health protection from possible well water contamination.

Pursuant to the Federal Safe Drinking Water Act Amendments of 1996 and the North Carolina Water Infrastructure Act of 2005, Buncombe County is seeking a 3+ million dollar loan to finance the extension and construction of City water lines to the approximately 129 locations currently supplied with well water. As part of the application for such loan, an interlocal agreement with the City is required to be submitted.

The interlocal agreement requires the County to pay back the loan, design and construct the water system, and pay all fees and costs except as set forth herein. The City is responsible for all inspections at no cost to the County, accepting the lines and waiving all plan review, development, and account set up fees for new customers connecting to the system at the time of completion of the project. When the project is complete, the City will accept ownership of the new lines along with responsibility for operating and maintaining them.

This action complies with the City Council's Strategic Operating Plan in that it promotes making the Asheville community one of the safest communities for all citizens while relying on partnerships to enhance infrastructure and capital improvements.

Pros:

- Opportunity to partner with Buncombe County to resolve a public health concern in the community.
- Supports Buncombe County's efforts to leverage State resources to improve public infrastructure.
- Addition of 129 new customers onto the City of Asheville's water system at a minimal cost.

Con:

- None noted.

As a condition of the agreement, Buncombe County has requested that the City of Asheville waive all development, plan review and account set up fees associated with the project. The value of these fees is:

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- Set up fees: $55 fee x 129 accounts = $7,095
- Plan review and technology fee = $468
- Develop review fees: $1,125 x 129 = $145,125
- Total fees waived: $152,670

The addition of 129 new water accounts will generate $33,901 annually in revenue. Therefore, the value of the fee waiver will be recovered in about 4.5 years.

Staff recommends that City Council approve the resolution as presented.

Mayor Bellamy was excited to offer 129 new customers and families the opportunity to tap onto our system so they can have safe drinking water. This has been in the works for many years and was proud that Buncombe County has taken the leadership.

On behalf of the 129 families, Mr. Tate McQueen thanked City Council for their support through this process. He said that this has been a long-time coming but there is still a lot of work to be done. He said this is a part of several steps as they still have air quality issues, the school bus issue with air quality and contamination that Dr. Jeff Wilcox from UNC-Asheville has said there can be upwards of hundreds, if not thousands, of barrels that were dumped on location. Providing this relief, the City has gone a long way to demonstrate that at the end of the day it's about cooperation. He said this is an excellent example of good governance.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 12-225. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 105**

**C. RESOLUTION NO. 12-226 – RESOLUTION DIRECTING INITIATION OF ZONING MAP AMENDMENT FOR PROPERTY LOCATED ON CALEDONIA ROAD AND FINALEE STREET**

A staff report on the summary of previous petitions and applicable Code provisions was provided to City Council.

Councilman Pelly said that he will be making a motion to request a re-examination of a current designed zoning that is assigned to three Kenilworth properties on Caledonia Road, totaling approximately 9 acres. This follows a request from the Kenilworth Residents Association (KRA) received by City Council at their August 28, 2012, meeting. He said that Section 7-7-2 of the City Code allows for the Asheville City Council to initiate a zoning map amendment. The reason the KRA has requested this map amendment is because they remain concerned about steep slopes, unstable slope conditions, limited site distances and narrow road surfaces in and around the three properties in question. The surrounding residential neighborhood is largely single family and zoned RS-8. Additionally, there is a project application for a 50-unit housing development on adjoining property which is scheduled to come before the Planning & Zoning Commission in October which, if approved, will mean further significant growth in the immediate area. His motion will not include the land associated with the 50-unit proposed development. Taken together, these facts make the case to re-examine the current zoning designation on the 3 parcels in question. The goal of his proposed motion is not an immediate rezoning of this property, but instead to direct the Planning & Zoning Commission and Planning staff to study the situation and make an appropriate recommendation to City Council.

Mr. Mike Stevenson, Mr. Briggs Sherwood and Ms. Mary Evers, board members of KRA, urged Council to support Councilman Pelly's proposed motion for various reasons, including, but

not limited to the incompatible uses, steep slope with unsafe soil conditions, and traffic and safety concerns. He said that over 900 residents in this area.

Councilman Pelly moved to adopt the following resolution directing the initiation of a zoning map amendment for property located on Caledonia Road and Finalee Street: "Whereas, the Asheville City Council is authorized, pursuant to N.C.G.S. 160A-381, 160A-384 and Sec. 7-7-2 of the Asheville City Code to initiate amendments to the official zoning map of the City of Asheville; and Whereas, the City Council has determined that it is in the public interest to consider the rezoning of property located on Finalee Street and Caledonia Road in the City of Asheville. Now, therefore, be it resolved by the City Council of the City of Asheville that (1) The City Manager be, and is hereby directed to cause a zoning study to be performed on the property identified on Exhibit A, and to formulate an appropriate recommendation for consideration in the manner prescribed by ordinance; and (2) The City Manager, or his designee, be and is hereby authorized to execute any documents necessary to give effect to this resolution. City Attorney Oast provided the Council with a copy of the affected property identified as Exhibit A.

Mr. Alan Ditmore explained why he was opposed to single family construction.

Councilman Hunt clarified the motion that it does not specifically direct this to RS-8 for all properties, but simply opens a review and consideration and study that might lead us to a rezoning away from Institution to something different.

Councilman Hunt was concerned of an outcome that would have lots of disbursed buildings that would be disruptive to the landscape and a lot of opportunity for erosion and landslides. He hoped as staff reviews this for ways the property might be rezoned that his concerns would be taken into account. He did not think Institutional is appropriate for those properties.

Councilman Bothwell said that at the Planning & Economic Development Committee meeting they nudged toward extending steep slope protection at the bottom of the hills everywhere. He felt we need to protect our mountains.

Councilman Davis agreed that the land is not appropriately zoned as Institutional; however, when we start initiating zoning without the owner of the property being involved, it's not a good step. He felt we are setting a dangerous precedence to start zoning other people's properties without their involvement in it. He felt it sends the wrong message. He acknowledged a letter received from Mr. Howington's attorney who expressed some willingness to meet with the KRA. He felt that getting City Council involved at this point makes it more difficult to get to a good place.

Mayor Bellamy said this has been a concern for years and they have not reached a good point, citing the extensive legal fees for all parties. She will support the review, but would not support an RS-8 zoning. She hoped Mr. Howington and the KRA will meet and look comprehensively at this transitional property going into the neighborhood and future development. City staff will not only look at this, but will talk to the neighborhood and property owner. She did not want to start a precedent but dialogue needs to happen to move forward to a better place.

Councilman Pelly said that reality check is that if the Planning & Zoning Commission recommends any kind of rezoning the property owner will be able to file a protest petition. A valid protest petition will require 6 out of 7 Council members support the rezoning. It's incumbent upon the community to work in good faith to craft a proposal that meets the needs of all the parties involved.

Councilman Bothwell recalled when there was a vote on this and was disturbed that Mr. Howington hired Vice-Mayor Manheimer's law firm in order to force her to recuse herself.

City Attorney Oast reminded Council that this vote is only to give staff direction. It does not bind Council with respect to any future votes and any past votes on this project should not be considered at this time.

Councilman Pelly moved for the adoption of Resolution No. 12-225. This motion was seconded by Councilman Bothwell and carried on a 5-1 vote, with Councilman Davis voting "no".

**RESOLUTION BOOK NO. 35 – PAGE 106**

**D. RESOLUTION NO. 12-227 - RESOLUTION APPOINTING A MEMBER TO THE CIVIC CENTER COMMISSION**

Councilman Smith, member of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Civic Center Commission.

The term of George Keller expired on June 30, 2012.

The following individuals have applied for a vacancy: Deanna Reeder, Grant Millin, Angela Rutledge, Chris Bubenik, Antonio Hinton, Arthur Ollendorff, Elizabeth Franks and Suzanne Rice

On August 14, 2012, City Council instructed the City Clerk to arrange interviews for Chris Bubenik, Antonio Hinton and Arthur Ollendorff.

After Council spoke highly of the candidates, Mr. Bubenik received 4 votes, Mr. Ollendorff received 1 vote, and Mr. Hinton received 1 vote. Therefore, Chris Bubenik was appointed as a member to the Civic Center Commission, to serve a three-year term, term to expire June 30, 2015, or until his successor has been appointed.

When Mayor Bellamy suggested changing the name of the Civic Center Commission to the US Cellular Center Commission, it was the consensus of Council to have the Civic Center Commission review this item on their agenda (pointing out pros and cons) and forward their recommendation to the Boards & Commissions Committee for their recommendation to the full Council.

**RESOLUTION BOOK NO. 35 – PAGE 108**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Ms. Patricia Dockery asked why the noise ordinance was not on the agenda as it was discussed at the September 24, 2012, Public Safety Committee. After hearing from Assistant City Manager Jeff Richardson (staff liaison to the Public Safety Committee), about the need for staff to flesh out several issues that arose from that Committee meeting, it was the consensus of Council to place the noise ordinance on the November 13, 2012, agenda.

Mayor Bellamy announced the following board/commission vacancies: Community Action Opportunities; Homeless Initiative Advisory Committee; and the Transit Commission. She also noted that there will be vacancies on the ABC Board in November. She encouraged those interested to contact City Clerk Maggie Burleson for an application form.

**Closed Session**

At 7:20 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or initial employment of an individual prospective public officer or employee. The

statutory authorization is contained in G.S. 143-318.11 (a) (3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11 (a) (6); and (2) To prevent the disclosure of information that is privileged or confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The laws that make the information privileged or confidential are N.C. Gen. Stat. sec. 143-318.10 (e) and N.C. Gen. Stat. sec. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in N.C. Gen. Stat. sec. 143-318.11 (a) (1). This motion was seconded by Councilman Smith and carried unanimously.

At 8:02 pm., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 8:02 p.m.

Magdalen Burleson
CITY CLERK

Mayor Bellamy
MAYOR

Tuesday – October 2, 2012 - 3:00 p.m.
Hall Fletcher Elementary School

Joint Meeting – City Council & Asheville City Board of Education

Present: Vice-Mayor Esther E. Manheimer, Presiding; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Present: Chairman Gene Bell, Board Member Alfred Whitesides Jr.; Board Member Peggy Dalman; Board Member Jacquelyn Hallum; Board Member Precious Folston; Superintendent Allen Johnson

Chairman Bell and Vice-Mayor Manheimer called the meeting to order at 3:00 p.m. and welcomed all officials for attending.

Superintendent Johnson reviewed a PowerPoint presentation on the Asheville City Schools Strategic Plan 2012-2015.

Mr. Kelvin Cyrus, Assistant Superintendent reviewed with Council a PowerPoint presentation on the graduation rate/achievement gap.

Ms. Cynthia Grady reviewed a PowerPoint on the upcoming capital projects at Asheville Middle School and Isaac Dickson Elementary School.

City Manager Jackson briefly reviewed City Council's Strategic Operating Plan and noted the number of partnerships that City of Asheville and the Asheville City School System are considering, or currently are engaged in that specifically address the goals City Council has outlined in its Strategic Operating Plan, specifically in the operating plan areas of Safe; Job Growth and Community Development; Multimodal Transportation; and Fiscal Responsibility.

Discussion occurred between the School Board members and City Council on what City Council can do to help reduce the achievement gap. Coming out of that discussion was the need to address the disadvantaged people in our community and get them back into the workforce. Some suggestions were holding a City Council meeting in a public housing development; rallying community support (churches, banks, non-profits, businesses, Chamber of Commerce, Mission Hospital, Buncombe County, City of Asheville, service providers) to hire our youth; think of solutions to break up the generational public housing occupants; apply for choice neighborhood initiatives; more funding for larger CAYLA, MAHEC, I Have A Dream (and the like) programs; work with employers who are willing to hire public housing employees to think of innovative ways to transport those employees to and from work; operate buses on Sundays and week nights; and encourage our youth to attend A-B Technical Community College for training to apply for new economic development jobs in our area.

There was a brief discussion after Mr. Cyrus responded to Vice-Mayor Manheimer when she asked for the definition of grade level achievement. The importance of pre-school education and parent involvement was stressed.

Councilman Hunt, liaison to the School Board, said that public education is a very high priority in our community. He suggested representatives of several organizations (City, County, Chamber and School Board) meet to try to address some of the concerns outlined.

Vice-Mayor Manheimer provided a timeline of the process of appointment of the School Board members whose terms will be expiring on April 1, 2013. Those consist of Chairman Bell (who has served 2 full terms), Board Member Al Whitesides (who has served 2 full terms) and Ms. Dalman (who has served 1 full term). Ms. Dalman was advised that even though she may request to be reappointed, she

would need to follow the same application process as those who will be applying. It was the consensus of all those present encourage highly qualified individuals to apply for the School Board seats.

On behalf of City Council, Vice-Mayor Manheimer thanked the School Board members for their services.

Chairman Bell and Vice-Mayor Manheimer adjourned the meeting at 5:07 p.m.

Magdalen Burnson
City Clerk

Mayor

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Tuesday – October 9, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; Assistant City Attorney Martha McGlohon; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Mayor Bellamy gave the invocation.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 25, 2012, AND THE SPECIAL MEETING HELD ON OCTOBER 2, 2012**

**B. ORDINANCE NO. 4124 - FIRST READING OF AN ORDINANCE AMENDING TO THE FRANCHISE AGREEMENT WITH THE EDUCATION RESEARCH CONSORTIUM**

Summary: The consideration of an ordinance amending the City of Asheville's franchise agreement with the Education Research Consortium.

Pursuant to City Ordinance No. 3056, which provides for the granting of franchises to install telecommunications facilities within the City of Asheville's right-of-ways, the City and ERC entered into a telecommunications franchise in June of 2004.

In October of 2009, based on changes in state law, the City's cable television franchise was terminated. This cable television franchise allowed for the provisioning of a public purpose fiber optic network known as the "institutional network," which served public safety stations and other city premises. Because it was financially infeasible to continue to use the cable television fiber optic network, City staff discontinued use and built a lower-fidelity wireless network to provision fire stations. Because certain locations continue to experience difficulty with the lower-fidelity network, city staff continued to work to replace the fiber optic network. In 2011, the City of Asheville also analyzed the capital cost of building its own fiber optic network via staff and a third party, with highest estimates at $4,902,890.

ERC received grant funding in 2012 for the purposes of building fiber optic in the region, as well as anchor institutions like fire and police stations. Moreover, the City of Asheville and the ERC continue to partner to connect other premises such as the Armory.

To govern these new builds, and to provide a value exchange that is satisfactory both to city staff and ERC staff, an amendment to the ERC franchise agreement is proposed. The

amendment allows the City to waive the collection of franchise fees from ERC in exchange for access to its broadband network.

This action will provide greater capacity and redundancy for public safety stations as well as other city facilities.

This action complies with the City Council Strategic Operating Plan goal to "Leverage internal and external partnerships for pursuing capital improvements and infrastructure projects," as well as "Safe: Asheville will be one of the safest and most secure communities when compared to similar cities."

Pros:

- Increased primary data networking capacity to fire stations, police stations, and other city facilities.
- Leverages external partnership to pursue infrastructure project.
- Cost effective method for utilizing fiber optic network.

Con:

- None.

The franchise amendment allow the City of Asheville to exchange the collection of franchise fees for use of a portion of the ERC broadband network. The value of the waived franchise fees is equal to or less than the value of accessing the broadband network. The arrangement also allows the City to avoid the cost of installing its own fiber infrastructure at an estimated cost of more than $4.9 million.

City staff recommends City Council approve the amendment to the ERC franchise agreement. The statute authorizing the granting of franchises requires that franchises be amended by ordinance, and that any ordinance granting or amending a franchise be passed at two regular meetings. Accordingly, this same item will appear on Council's agenda for the October 23 meeting.

**ORDINANCE BOOK NO. 28 – PAGE 1**

**C. RESOLUTION NO. 12-228 - RESOLUTION APPROVING THE N.C. DEPT. OF CULTURAL RESOURCE'S UPDATED MUNICIPAL RECORDS RETENTION AND DISPOSITION SCHEDULE ISSUED SEPTEMBER 10, 2012**

Summary: The consideration of a resolution approving the N.C. Dept. of Cultural Resource's updated Municipal Records Retention and Disposition schedule issued September 10, 2012.

N.C. Gen. Stat. sec. 121-5 mandates that records defined under Chapter 132 may be disposed of only in accordance with an official records retention schedule. The N.C. Dept. of Cultural Resources, Division of Archives and History, has updated the 2009 Municipal Records Retention and Disposition Schedule.

This updated Schedule provides that records listed may be destroyed after the specified retention periods without further approval from the City or the N.C. Dept. of Cultural Resources provided, the governing body has authorized the records listed for destruction to be destroyed through its blanket approval of the Retention and Disposition Schedule.

Pros:

- Will allow records listed to be destroyed after specified retention period
- Will free up storage space

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Con:

- None noted.

City staff recommends City Council adopt the resolution approving the N.C. Dept. of Cultural Resource's updated Municipal Records Retention and Disposition schedule issued September 10, 2012.

**RESOLUTION BOOK NO. 35 – PAGE 109**

**D. ORDINANCE NO. 4125 - BUDGET AMENDMENT TO AUTHORIZE THE USE OF N.C. STATE DRUG SEIZURE FUNDS**

Summary: The consideration of a budget amendment, in the amount of $44,900, to authorize the use of North Carolina State Drug Seizure Funds to fund the purchase of Emergency Response Team (ERT) 13 ballistic vests and to adjust the supply account line for previous expenditure overage.

The North Carolina State drug seizure program is an equitable sharing program which divides the illegal proceeds from drug dealing between the North Carolina State government and local law enforcement agencies. It is designed to help off-set the considerable cost of drug enforcement, by allowing local law enforcement agencies to use seized monies for equipment, training, and improvements that might not necessarily be budgeted for by the agency. The illegal proceeds are divided with 25% going to the North Carolina Department of Revenue and 75% going to the local law enforcement agency initiating the seizure.

The City of Asheville Police Department has received $44,900 in North Carolina State drug seizure funding. This amendment will authorize the use of that funding to fund the purchase of Emergency Response Team (ERT) tactical ballistic vests.

This action complies with City Council's Strategic Operating Plan in the Focus Areas - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities and Fiscal Responsibility – The City of Asheville will support a stronger, more prosperous community by making smart investments that accomplish lasting, tangible returns.

Pros:

- North Carolina State drug seizure revenues used to fund 13 ballistic vests for ERT
- Making adjustments for the supplies account line previous expenditure overage

Con:

- None noted

Accepting and allocating these State Forfeiture Funds is a financial benefit to the APD allowing us to better equip our employees. There is no impact to the General Fund budget.

City staff recommends City Council adopt a budget amendment in the amount of $44,900 authorizing the use of North Carolina State Drug Seizure Funds to fund the purchase of Emergency Response Team (ERT) ballistic vests.

**ORDINANCE BOOK NO. 27 – PAGE 471**

**E. RESOLUTION NO. 12-229 - RESOLUTION ADOPTING CHANGES TO THE CITY OF ASHEVILLE'S FINANCIAL POLICY TO INCLUDE AN AUDIT PROCUREMENT POLICY**

Summary: The consideration of a resolution adopting changes to the City of Asheville's Financial Policy to include an Audit Procurement Policy.

**Best Practices**

The Government Finance Officer's Association (GFOA) has made the following recommendations, among others, regarding the selection of auditing services:

- Governmental entities should enter into multiyear agreements of at least five years in duration when obtaining the services of independent auditors. Such multiyear agreements can take a variety of different forms (e.g., a series of single-year contracts) and allow for greater continuity and help minimize the potential for disruption in connection with the independent audit. Multiyear agreements can also help to reduce audit costs by allowing auditors to recover certain "startup" costs over several years, rather than over a single year.

- Governmental entities should undertake a full-scale competitive process for the selection of independent auditors at the end of the term of each audit contract, consistent with applicable legal requirements. Ideally, auditor independence would be enhanced by a policy requiring that the independent auditor be replaced at the end of the audit contract, as is often the case in the private sector. Unfortunately, the frequent lack of competition among audit firms fully qualified to perform public-sector audits could make a policy of mandatory auditor rotation counterproductive. In such cases, it is recommended that a governmental entity actively seek the participation of all qualified firms, including the current auditors, assuming that the past performance of the current auditors has proven satisfactory.

**History**

The City of Asheville has utilized Dixon Hughes Goodman LLP (Dixon Hughes) for auditing services for the last seven fiscal years under single-year contracts. The City retained the services of Martin Starnes & Associates for the FY 2004-2005 fiscal year audit and utilized Crisp Hughes Evans for several years prior to FY 2005. Crisp Hughes Evans merged with a Dixon Hughes predecessor firm in 2004.

The City's long term relationship with Dixon Hughes is likely related to several factors, including the fact that it is the largest CPA firm in the southeast with a local office in Asheville. During the last four years, Dixon Hughes worked with Asheville as the City transitioned to a more complex financial system through the implementation of the enterprise resource planning (ERP) software Munis. At the same time, the City's Finance Department experienced staff turn over in key positions, and continuity in the independent auditor's role has been essential to timely completion of the audit. As a result, Dixon Hughes has extensive experience auditing the City's financial systems, accounts and records, including valuable insight and understanding of the financial system's processes and controls.

In 2011, City Council expressed an interest in pursuing a competitive process for the selection of independent auditors. Staff was prepared to launch a Request for Proposals (RFP) but requested that the City delay the RFP process for an additional year to permit a relatively new team in the Finance Department the optimal opportunity to complete the audit by October 31, 2012, a deadline that was adopted by City Council as part of the City's Financial Policy.

City Council approved staff's recommendation, and the services of Dixon Hughes were retained for a single, final year to conduct the audit of the city's accounts for the fiscal year ending June 30, 2012. Staff recommended that the City issue an RFP in the November/December 2012 timeframe for audit services for FY 2013.

**City of Asheville Financial Policy**

Staff believes an RFP for audit services would generate sufficient competition among firms due to the size, scope and duration of the engagement. Given GFOA's recommended best practices, staff recommends City Council adopt the following statement as part of the City's Financial Policy:

> **Audit Procurement Policy:** When obtaining the services of independent auditors, the City of Asheville shall enter into multiyear agreements of at least five years in duration through a series of single-year contracts as consistent with North Carolina State law. The City shall undertake a full-scale competitive process for the selection of independent auditors at the end of the term of each audit contract, consistent with applicable legal requirements. It is the City of Asheville's policy that the independent auditor be replaced at the end of the five-year engagement to enhance auditor independence unless lack of competition among audit firms fully qualified to perform public-sector audits make mandatory rotation counterproductive. The principal factor in the selection of an independent auditor is the auditor's ability to perform a quality audit. In no case should price be allowed to serve as the sole criterion for the selection of an independent auditor.

If adopted, the City's current audit service firm could not compete in the RFP process for FY13 since it has been working with the City for a period greater than five years. The policy, as drafted, would prevent consecutive contract awards, unless the City determines rotation would be counterproductive.

**Timeline**

- RFP development and release: November 2012
- Staff evaluation of responses: December 2012
- Finance Committee review: January 2013
- Contract award: February 2013

The City Council Finance Committee unanimously approved this policy at its September 25, 2012, meeting.

Adoption of this policy support the City's strategic goal to operate to the highest levels of fiscal responsibility.

Transitioning to a new audit firm will require additional time to get the auditors familiar with Asheville's financial systems, processes and controls. As illustration, according to a survey of the public accounting firms and Fortune 1000 public companies (United States General Accounting Office 2003), auditors' initial year audit costs increase by more than 20 percent over subsequent year costs to acquire the necessary knowledge of the client. In addition, their marketing costs also increase by more than 1 percent. Additionally, the survey found that clients will incur additional auditor selection costs and auditor support costs of at least 17 percent of initial-year audit fees.

For FY 2012, the City of Asheville executed an audit contract with Dixon Hughes for $109,000. Staff would estimate that the first year of an engagement with a new firm would range from $110,000-$145,000.

Staff recommends approval of resolution to adopt an Audit Procurement Policy in the City of Asheville's Financial Policy. Staff also recommends that Council direct staff to execute an RFP for audit services according to the timeline presented for the FY13 audit.

**RESOLUTION BOOK NO. 35 – PAGE 110**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Bothwell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Hunt and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. BUNCOMBE COUNTY TAX COLLECTOR

Buncombe County Tax Collector Gary Roberts briefly provided Council information on collections, the new motor vehicle law and the next reappraisal. He provided Council with a chart of the history of the collection rates for the City of Asheville from 2008 – 99.13% through 2012 – 99.31%. The state average for municipalities with population of 50,000 and greater is 98.25%.

Mr. Roberts responded to various questions/comments from Council related mostly to the next reappraisal.

On behalf of City Council, Mayor Bellamy thanked Mr. Roberts for providing Council an update on the activities of his office.

### B. BOARD OF ADJUSTMENT UPDATE

Mr. David Brown, Chairman of the Board of Adjustment, briefly updated the Council on the mission of the Board of Adjustment, their membership and their goals.

On behalf of City Council, Mayor Bellamy thanked Mr. Brown and the entire Board of Adjustment for their hard work to help reduce possible litigation.

At the suggestion of Mayor Bellamy, it was the consensus of Council to have the Planning & Economic Development Committee review the sign ordinance (exclusive of the digital signs which have recently been reviewed).

### C. CITIZENS-POLICE ADVISORY COMMITTEE UPDATE

Mr. Charlie Hume, Chairman of the Citizens-Police Advisory Committee, briefly updated Council on the Citizens-Police Advisory Committee. He outlined their mission, membership, goals, accomplishments and their initiative of "Taking It To The Streets."

On behalf of City Council, Mayor Bellamy thanked Mr. Hume for his leadership and the entire Citizens-Police Advisory Committee for their hard work.

### D. WATER RESOURCES UPDATE

Project Manager Phil Kleisler updated City Council on the Water Resources process update from September 25 – October 9, 2012. He said that the internal financial analysis/governance models meeting has been moved from October 16, 2012, to October 30 in the U.S. Cellular Center Arena Meeting Room. We have invited 16 entities to this meeting. He mentioned the MSD study key dates; and regarding the asset value, appraiser interviews to determine the feasibility of an asset review. He then provided Council with the information sharing between the City and MSD.

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH PLASTICARD LOCKTECH INTERNATIONAL

### RESOLUTION NO. 12-230 - RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR PLASTICARD-LOCKTECH INTERNATIONAL EXPANSION

### ORDINANCE NO. 4126 - BUDGET AMENDMENT FOR PLASTICARD-LOCKTECH INTERNATIONAL EXPANSION

Economic Development/Civic Center Director Sam Powers said that this is the consideration of a resolution approving a $67,000 economic development incentive grant for Plasticard-Locktech International (PLI) and the corresponding budget amendment in the amount of $13,400 from property tax revenue for the estimated first year's installment of this five-year economic development incentive grant. This public hearing was advertised on September 28, 2012.

Plasticard-Locktech International (PLI) was founded in 1988 in Asheville, NC. From that beginning, PLI has grown to become the world's largest hotel keycard manufacturer and a leading specialty printer of plastic and paper products. The company is planning a $4,600,000 expansion on its South Asheville campus and has requested consideration for a performance based incentive grant under the City of Asheville Economic Development policy. The company will create 42 new jobs within three years, with an average wage of $12.50/hour and offers comprehensive benefits to its employees. The City of Asheville is considering offering a performance-based grant totaling $67,000.

The purpose of this investment is to allow PLI to expand its operations, and is projected to result in the creation of a substantial number of jobs that pay at or above the median average wage for Buncombe County.

PLI has requested consideration of a performance-based incentive grant under the City of Asheville Economic Development Incentive policy. The City proposes to offer PLI a performance-based grant not to exceed $67,000. The performance-based grant will be paid in increments over a five (5) year period. Payments begin after the investment is made, taxes are paid and verified, and the company requests payment. The amount of the annual payment will take into consideration the estimated annual ad valorem property tax revenue attributable to the capital improvements, and each annual payment is projected to equal 75% of said estimated revenue. Any amounts paid to PLI pursuant to the Agreement are subject to adjustment or recapture if the terms and conditions of the Agreement as to investment and job creation are not fulfilled.

The City will fund the payments from the general fund. The purpose of the proposed cash grant is to encourage PLI to proceed with its proposed expansion in the City of Asheville. The company conducted an extensive site search in several states and this grant meets the requirements of the "But For" test. Staff believes that the project will further the economic interests of the area served by the City in several ways, including, but not limited to: (a) creating a number of jobs having a wage at or above the median average wage for Buncombe County; (b) enhancing the City's tax base and the City's tax revenues; and (c) encouraging the retention and expansion of a major industrial operation in an existing facility.

The economic development incentive grant ties into City Council's Strategic Operating Plan as it addresses multiple focus areas of the Plan.

Pros:

- Performance driven grant that is distributed after job and investment is achieved;
- Supports job creation and capital investment in manufacturing in Asheville;
- Supports retention and expansion of existing industry in the City;
- Supports development of an identified economic cluster in the city; and,
- Supports regional and state cooperation in the project.

Con:

- Grant is formulated based on use of approximately 75% of the value of new incremental tax revenue for a five year period.

The project has a positive fiscal impact on tax revenues received by the City. Initially (during the grant period), the City will receive approximately 25% of the new incremental tax revenues from the project. After five years, the City will henceforth capture 100% of the new taxes.

City staff recommends Council approve the resolution authorizing an economic development incentive grant for Plasticard-Locktech International not to exceed $67,000 and also the corresponding budget amendment in the amount of $13,400 from property tax revenue for the estimated first year's installment of this economic development incentive grant.

Mayor Bellamy opened the public hearing at 5:50 p.m.

Rev. Christopher Chiaronmonte was opposed to City Council approving this grant since they are the world's largest hotel keycard manufacturer and they made a lot of profit.

Mr. Alan Ditmore saw no particular reason to focus an economic incentive grant to just one business.

Mr. Peter Krause, representing PLI, said that the expansion will invest over $4 million to expand the physical existing location and in the process they will be creating 46 new jobs. They have also recently acquired a 44,000 square foot additional building in the Sweeten Creek Industrial Park and that, in combination with the physical expansion, hopes recognize the commitment they have to the Asheville area. With that additional building, they are now anticipating adding 80 new jobs to the area. He hoped for City Council support.

Mayor Bellamy closed the public hearing at 5:58 p.m.

Mayor Bellamy spoke in support of their expansion in our community. They are paying salaries above minimum wage and was pleased to hear about their expansion.

Councilman Smith said that there is discussion about how we can better support smaller local industry.

Councilman Bothwell was pleased to see that PLI is doing well, but could not support this action. He felt if a business is committed to the community, they should not be asking for a grant from the City.

Mayor Bellamy said that members of Council have previously received copies of the resolution and budget amendment and they would not be read.

Councilman Davis moved for the adoption of Resolution No. 12-230. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Councilman Bothwell voting "no."

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**RESOLUTION BOOK NO. 35– PAGE 111**

Councilman Hunt moved for the adoption of Ordinance No. 4126. This motion was seconded by Councilman Pelly and carried on a 6-1 vote with Councilman Bothwell voting "no."

**ORDINANCE BOOK NO. 27 - PAGE 473**

**B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE BILTMORE PARK TOWN CENTER SIGNAGE PLAN FOR OFFICE TENANT SIGNAGE AND RETAIL TENANT IDENTIFICATION SIGNS**

**ORDINANCE NO. 4127 - ORDINANCE AMENDING THE BILTMORE PARK TOWN CENTER SIGNAGE PLAN FOR OFFICE TENANT SIGNAGE**

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance amending the Biltmore Park Town Center signage plan. This public hearing was advertised on September 28 and October 5, 2012.

In July 2007, City Council approved a signage plan for the Biltmore Park Town Square (BPTS) urban village project. Comprehensive signage plans are allowed by ordinance to enable larger development sites to develop a custom plan for signage that addresses unique needs and contexts in a comprehensive and harmonious manner.

The signage plan option for BPTS plan was the City's first and most comprehensive. But as individual buildings have opened for business and more and more housing units and commercial/office space has become available, the signage needs at BPTS are becoming better understood, leading for proposals to modify the approved signage plan. In June 2009 an amendment was approved. A second amendment is now being requested affecting retail and office tenants. The BPTS development is nearly complete and almost fully leased and Biltmore Farms is requesting the amendment to the approved signage plan to allow for additional signage to assist in identification and leasing of their remaining office and commercial space.

A summary of both the original proposal and the subsequent amendment are offered below. More detailed information may be found in the complete reports which are included as an attachment to this report.

Original 2007 Signage Plan Request

- Project Identity (monument, wall mounted, gateway, rooftop)
- Tenant Identity (major tenant, minor tenant, wall or window mounted)
- Traffic Control (customized & enhanced traffic and street signs)
- Directional (vehicular, pedestrian, parking, valet)
- Residential & Office Identity
- Service

The most notable elements of the original request were, in part, the volume of signs proposed that comprised a very comprehensive and thoroughly assembled application. In addition, the amount and number of tenant identity signs including eight (8) "Major Tenant" identification signs (that can be as large as 200 s.f. each). This allowance is significantly more than what is normally permitted for the Urban Village or other more urban zoning designations and is more than what is allowed for most single tenant signs in other commercial districts (where they are typically limited to125 s.f.).

That proposal also included a request for a rooftop project sign and tenant identification signage on the back walls of the parking deck and movie theater adjacent to, and visible from, I-

26. Those last two requests were not approved as part of the original package; however, a 350 s.f. wall mounted project identity sign was approved to be located on the back side of the parking structure instead of the rooftop sign.

2009 Signage Plan Amendment

- A new 650 s.f. temporary banner advertising BPTS with the simple text message of "Apartments, Condos, Retail shops, Office Space". This banner remained up for over 1 year.
- Larger Project/Site Identity Sign – the 350 s.f. BPTS site identity sign on the back of the parking deck was replaced with a new 510 s.f. sign.
- Larger Monument sign – replaced two smaller 60 s.f. monument signs with a single new larger 188 s.f. sign that is 15 ½ feet tall, located at the entrance to the Park/Square.

All three of these requests were supported and approved.

2012 Signage Plan Amendment – current proposal

There are two separate amendments being proposed. The first amendment is related to the amount and size of signage for major office tenants; the second amendment revives the original request for tenant identification signage on the backside of the parking deck and movie theater, visible from I-26.

1) Office Signage

The current plan limits the amount of office signage to one, 125 square foot attached sign per building, with only two signs total for the entire development. The proposal is to allow up to three signs per building, each at 125 s.f., with no more than two signs per façade. The four office buildings included are 1 & 2 Town Square, and Buildings 2B & 7C.

*Considerations:* The limit on the number of signs per development was based on an estimate for the number of major office tenants. It is now apparent that there is a better market for major office tenants than had previously been recognized and the total number of signs should be increased appropriately. Additionally, these mixed use buildings are quite large and range in size from 60,000 square feet up to 75,000 square feet with the office space occupying approximately 75% of these buildings and the height and mass of the buildings can aesthetically support several larger signs. Lastly, the signs also help identify the location of these major office tenants for employees and especially visitors to the center.

2) Retail Tenant ID Signage

The original submittal in 2007 included a request for retail tenant identity signage on the back of the parking structure and movie theater visible from Interstate 26. This request was not supported by City Council in 2007; however, the applicant has supplied new information for the Council's consideration. The current request, identical to the 2007 request, is to allow up to four tenant identification signs on both the parking structure and the movie theater for a total of eight tenant identification signs. The letters for the sign text would be 4' tall and the signs would be internally illuminated. No maximum length for these signs is proposed.

*Considerations*: As a frame of reference, the letters on the BPTS sign are 7 ½ feet tall; the letters for the Hilton are 4 feet tall; and the letters for the Regal Cinema are 3 feet tall. Because the limiting factor for the sign is the size of the letter, the overall size of each tenant sign cannot be determined and will be based on the size of the letters, the number of letters in the name, and the space between each letter. This could result in signage that has an overall square footage greater than many of our standard tenant identification signs and when added together cumulatively, would be larger than most interstate billboards.

Analysis: Staff feels that the unique context and nature of this large urban project does warrant special consideration. There are no significant concerns for the office tenant signage which is located internally to the site, does not overwhelm the architecture with signage, and provides important identification and wayfinding. The request for the tenant identification signage is of concern given staff understanding of the purpose and intent of the Urban Village zoning and associated development standards. The stated purpose of the Urban Village Zoning is to create a mixed-use development that is economically strong but which is also pedestrian-oriented with innovative, high quality site design and architecture which contributes to, or enhances, Asheville's placemaking character. Accordingly, the approved signage plan was designed to primarily highlight and identify the Town Square as a "place", with very limited advertising for individual tenants (thus far limited to the hotel and the theater which have frontage along the interstate). If off-site visibility is to now be provided for retail tenants, the purpose of the signage would change from being identification to advertising. Supporting this request also has the potential for establishing a precedent that could open the door for similar requests.

Despite these concerns, the applicant's statement of need for this change presents important information regarding the evolving economics of the current market and this development type. Considering a sustainable economic model for a large mixed-use town center is very important; and therefore the larger part of the staff concern is centered on the magnitude of the request. We believe the request is somewhat excessive (both in size and number of signs requested) and perhaps more than what is necessary to afford relief.

Additionally, the proposed signs are very large and the requested locations appear visually awkward and not well integrated into the design of the very large Town Square identity sign, or other attached signage on the movie theater. Sign structures such are these are structurally very significant and, if approved, it would be reasonable to expect these (or similar signs for other retail tenants) to remain in place for a very long period of time and the opportunity to creatively address needs through a harmonious design will most likely have passed. For reference, the stated purpose of the signage plan is:

> *. . . . to permit creativity in sign design and placement to address site issues and constraints associated with topography, pedestrian-orientation, way-finding and other conditions unique to the subject development.*

This proposal does not appear to uphold the stated purpose of the sign plan in that it does not provide a creative solution that addresses pedestrian-orientation or wayfinding. The underlying purpose of the signage is to provide recognition and advertising for the retail tenants located in the town square development for those driving on Interstate 26.

This proposal most closely supports the goal of *sustainability* through improved identity and advertisement opportunities that would support the economic viability of the overall project.

Pros:

- Addresses a specific economic need for a very large private investment
- Provides enhanced retail tenant identification from interstate to the motoring public
- Provides improved identification and wayfinding of key office tenants to visitors

Cons:

- Proposed number of tenant identification signs may be in excess of what is needed to achieve the purpose of store recognition
- Size of tenant identification sign appears out of scale with structures and other signs
- Signs are long-lasting and reduces opportunity for more creative solutions in the future
- May establish a concerning precedent

No direct fiscal impact to the City. There is the potential that improved or increased signage will contribute to the sale and leasing of available space along with improved identity, providing a positive fiscal impact through new property and sales tax.

Staff recommends: (1) Approval of the office tenant signs, and (2) Denial of the tenant identification signs, as proposed.

Should Council members have interest in supporting a revised plan for tenant identification signs along the interstate, staff would recommend that the applicant be provided feedback on recommended changes and return with a revised sign concept at a later date.

Mayor Bellamy opened the public hearing at 6:15 p.m.

Mr. Paul Szurek, CEO of Biltmore Farms, said that this amendment is about identification, not advertising. For the office tenant ID signs, (1) the signs on each façade would contribute to the urban grain and aesthetic appeal of the Biltmore Park Town Center; (2) help customers and visitors find these major destinations and minimize traffic confusion and congestion; and (3) these office ID signs will help promote economic development in Asheville. The goal of the major tenant interstate-facing identity signs is to ensure that passersby on Interstate 26 are aware of the quality retail nature of the Biltmore Park Town Square. He explained the very important reasons for this amendment, those being sustainability, the retail tenant needs, fairness and the City's tax base.

Mayor Bellamy closed the public hearing at 6:22 p.m.

In response to Councilman Hunt, Ms. Tuch said there are existing billboards in the vicinity along I-26 in both directions and an option would be for them to advertise the entire center.

Councilman Bothwell moved to approve the Office tenant signs, 125 square feet each, no more than three per building and no more than two per façade. Office tenant signs shall be limited to only those buildings supporting the office uses and buildings shall be a minimum of 60,000 s.f. in overall size and contain a minimum of three stories. This motion was seconded by Councilman Pelly and carried unanimously.

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In response to Councilman Smith, Mr. Szurek said that the retail space is approximately 75% occupied. The more visible components – office and apartments – are both more than 97% leased. If Council approved the retail tenant ID signage, he believed we would get the retail space to 92-95% occupied.

Ms. Tuch responded to Mayor Bellamy regarding multi-tenant signage. She noted there is a free standing multi-tenant sign as you enter Biltmore Park Town Square close to Long Shoals Road.

Councilman Davis said that the City has partnered with Biltmore Park from the start of this project and would like to see this succeed. He understood that every customer that comes in to visit a large business is a potential customer for each of the local and regional retailers. However, he wondered if Mr. Szurek would be willing to have a 5-year amortization period of the signs and if during those five years the retail occupancy rises, that the signs would sunset.

Mr. Szurek felt they would not be able to attract retailers if the signage goes away after they hit a target occupancy rate. He said the consumer needs to associate the availability of certain products and services with an actual physical location. He felt that if we make an urban village model work and support the parking decks, they need to have that identification signage

as long as we have an urban village at that location. He provided Council with some pictures of what the retail ID signage might look like on the buildings facing the interstate.

Councilman Hunt felt we have too much signage overall in the City now and would like to see tighter control. He was very appreciative of Biltmore Park's commitment to the urban village concept. He wondered if the developer and staff could find a balanced approach with some adjustment to the 510 sq ft sign to allow for the retail id signage.

Councilman Smith moved to direct City staff to work with the developer to show an accurate representation of the exterior retail ID signage for the Biltmore Park Town Square which could support the success of the retail occupancy and bring that back to City Council for review. This motion was seconded by Councilman Davis.

When Mayor Bellamy questioned if this would need to come back to Council for approval if the developer and staff come to an agreeable plan, Assistant City Attorney McGlohon said that since this would be a variance, Council cannot delegate that approval to City staff.

Mr. Szurek said that the existing Regal and Hilton signs are consistent with the City's standards and that would be the quality of the retail tenant ID signage.

Councilman Hunt asked for a friendly amendment to the motion to allow the amendment be more substantive in terms of size of lettering related to the existing signage; however, after a brief discussion, he withdrew the amendment.

Planning & Development Director Judy Daniel clarified that Council's intent is that City staff work with the developer for a modification to their sign package that is more aesthetically representative of what Council intended with this project and yet supports their retail, including the ability to work on options for modifications as to how the signage is presented, size, coloring, etc.

The motion made by Councilman Smith and seconded by Councilman Davis carried on a 6-1 vote, with Councilman Bothwell voting "no".

When Mayor Bellamy asked when this matter would be back before Council, Mr. Szurek said they should be ready in approximately one month.

**Closed Session**

At 6:53 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The location of the property is 80-91 Riverside Drive. The statutory authorization is contained in G.S. 143-318.11 (a) (5); (2) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or initial employment of an individual prospective public officer or employee. The statutory authorization is contained in G.S. 143-318.11 (a) (3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11 (a) (6); and (3) To prevent the disclosure of information that is privileged or confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The laws that make the information privileged or confidential are N.C. Gen. Stat. sec. 143-318.10 (e). The statutory authorization is contained in N.C. Gen. Stat. sec. 143-318.11 (a) (1). This motion was seconded by Councilman Smith and carried unanimously.

At 7:26 p.m., Councilman Smith moved to recess the closed session to return to the formal meeting, noting that the closed session would continue at the end of the formal meeting. This motion was seconded by Councilman Bothwell and carried unanimously.

**C. CONTINUANCE OF PUBLIC HEARING TO CONSIDER A MUNICIPAL SERVICE DISTRICT FOR DOWNTOWN ASHEVILLE**

**RESOLUTION NO. 12-231 - RESOLUTION CREATING A DOWNTOWN MUNICIPAL SERVICE DISTRICT, ALSO KNOWN AS A BUSINESS IMPROVEMENT DISTRICT, IN DOWNTOWN ASHEVILLE**

Project Manager for the Asheville Downtown Master Plan Sasha Vrtunski said that this is the consideration of a resolution creating a downtown Municipal Service District, also known as a Business Improvement District (BID), in downtown Asheville. This public hearing was opened on June 12, 2012, continued to September 25, 2012, and then continued to October 9, 2012.

She provided Council with the following staff report:

"The Interim Board for the Downtown Asheville Business Improvement District is bringing forward a proposal for a district after spending over two years working on the proposal as recommended in the Downtown Master Plan, and more recently, preparing responses to the issues outlined by City Council on June 12.

The Downtown Master Plan recommended that Asheville explore a business improvement district to help manage and coordinate the public realm in downtown. A Subcommittee to explore a Downtown Management entity began meeting in December, 2009 several months after Council adoption of the Master Plan. A large forum was held June 2, 2011 and a series of smaller meetings were held during the fall of that year. As firm ideas for a proposal began to take shape, an "Interim Board" was formed in January 2012 to continue moving the idea forward. After further work and honing ideas, another series of meetings were held in Spring, 2012 to discuss with interested stakeholders the draft of a proposal that would be presented to City Council. That proposal was for a District that would provide "clean", "safe", "advocacy", and coordination services.

On June 12, City Council held a public hearing on the proposal for a business improvement district. The proposal at that time was for a 7 cent rate (per $100 value), with boundaries to be the same as the Central Business District (CBD). The proposal was for "Clean and Safe" services to be provided by a sub-contractor, and coordination and advocacy services to be performed by the District staff. After hearing substantial public input, City Council members raised issues and questions they felt needed to be answered before they could reach a decision. The public hearing was continued to September 25, 2012. On September 25, 2012, the public hearing was then continued to October 9, 2012.

Following the June 12 public hearing, staff worked with the Interim Board to develop a 90 day Action Plan. In their review of the Council questions and concerns, the Interim Board split into three subcommittees: Budget; Bylaws; and Board structure. On July 17 a public forum was held to get input on the specific issues that Council had raised: Ambassadors (general assistance/safety personnel), general BID Services, Board Composition, and the Board Selection Process.

A list of public meetings held:

| Date | Event | Location |
|---|---|---|
| June 2, 2011 | Public Forum/ Panel Discussion | U.S. Cellular Center |
| October 27, 2011 | Presentation and discussion | Olive or Twist |

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| | | |
|---|---|---|
| November 1, 2011 | Presentation and discussion | NC Stage Co. |
| November 9, 2011 | Presentation and discussion | Lexington Ave. Brewery |
| November 10, 2011 | Presentation and discussion | City Bakery |
| November 14, 2011 | Presentation and discussion | 60 N. Market |
| November 29, 2011 | Presentation and discussion | Grove Arcade |
| January 2012 | Interim Board Formed | |
| March 15, 2012 | Presentation and discussion | Pack Place Board Room |
| March 20, 2012 | Presentation and discussion | Pack Place Board Room |
| March 21, 2012 | Presentation and discussion | Lord Auditorium, Pack Library |
| March 22, 2012 | Presentation and discussion | Grove Arcade |
| June 12, 2012 | City Council Public Hearing | City Hall |
| July 17, 2012 | Public Forum | U.S. Cellular Center |

The Interim Board took that feedback, did additional research, and formulated a revised proposal outlined in their report to City Council. The following address these items:

*Boundaries:* A question was raised about the boundaries of the proposed District at the June 12 public hearing. Specifically, Council mentioned the area east of Charlotte Street, as this area currently is predominantly a more suburban form of building without retail feel or potential as found in the rest of the CBD. The Interim Board now proposes to pull the district back to the west side of Charlotte Street. The Interim Board also spent time in June and July looking at another version of a smaller core district, but the majority of the board felt strongly that the larger district was more viable and services could help propel the other areas in revitalization.

*Budget:* City Council expressed a desire to have more detail concerning the budget for the BID. In response, the Interim Board has provided more budget detail in the report. On Page 11 of the Report, the year 1 budget totals $537,825 and the year 2 budget, with safety ambassadors included, totals $705,894. The Interim Board "believes the objectives of the proposed BID can be met with a tax rate increase between 5 and 7 cents per $100, depending on local government participation."

*Services and Ambassador Program:* There were many concerns raised at the June 12 public hearing about the safety ambassador section of the improvement district proposal. Two of the potential service providers were made aware of these concerns and responded that they work successfully in communities similar to Asheville (Boulder, Berkeley) where there were also initial concerns. In addition, the Interim Board asked these contractors for estimates for their services without the safety ambassador aspect of the program. As the concern in Asheville is substantial and this service is a substantial expense, the Interim Board decided to delay proposing implementation of a safety ambassador program until it can be more closely examined by an Advisory Committee made up of a larger constituency. The Interim Board is providing information on two scenarios: one with safety ambassador services in year 2 & 3, and one with clean and green services only for years 1-3. The decision would be made by the new, permanent board on which of these scenarios to recommend, although ultimately City Council agreement would be needed on the services to be provided.

*Board Composition:* City Council expressed concerns about the Board composition as proposed in June. Comments included ideas about opening it up, and possibly including a social service agency or homeless agency representative on the Board. The Interim Board looked closely at the Board composition issue and decided to add at-large seats and to make previously non-voting seats, voting seats. This proposed composition is similar to other larger cities' boards, and builds on what was proposed in June 2012 by having slotted seats for different types of property and business owners and residents.

The Interim Board decided that the Advisory Committees were the best way to address Council's remaining concerns. These committees will give input to the Board from all types of stakeholders, including homeless advocates, social service agencies, and citizens who have a passion about downtown, but may not necessarily own a business or property downtown.

*Board Selection:* The Interim Board considered several methods for selecting the Board: election through a balloting process; Board election process, and Council appointment process. The Interim Board felt strongly that the best process would be a Board election process. This is similar to many mid-size and larger cities. It is viewed that the slotted seats (major property owner, small property owner, retail store, etc) are the mechanism to give the Board the necessary diversity while maintaining a majority of property owners.

The Interim Board is, however, asking that City Council approve the slate for the first board. There are a few members of the Interim Board interested in continuing, but a number of them are concluding their service. The Interim Board recommends that a nominating committee be formed, including non-Interim Board members and a City Council member. This committee would accept nominations from qualified downtown stakeholders and bring a slate to City Council for approval.

*Bylaws:* City Council was interested in having a draft set of bylaws put forward. Several attorneys on the Interim Board used some other cities as models, and have drafted a set of bylaws, included in the Appendix. The bylaws reflect the decisions made regarding board composition and selection process outlined above.

*City Oversight:* In June, 2012, there were some Council concerns expressed in regards to City Council oversight of the BID. The Business Improvement District would be different than other boards in that the City Council will have annual approval of the budget and will set the tax rate. Because tax monies are being used, there would be a contract between the City and the BID that clearly outlines the services to be provided, and the duties and responsibilities of the Board and District. This contract could be approved annually along with the budget. In some cities this is done automatically to keep the contract in force – but both parties review the contract to ensure compliance. The Interim Board has proposed a yearly independent audit and an quarterly report to City Council or to one of the Council committees.

These topics and how they have been modified are summarized below:

| **Topic** | **Original Proposal** | **Revised Proposal** |
|---|---|---|
| Boundaries | Entire CBD | CBD west of Charlotte Street |
| Budget | $ 750,000 - $800,000 | $537,825, year 1; $705,894 with safety if added in year 2.<br>-reductions primarily via cuts to overhead cost estimates |
| Ambassador Service | Starting year 1 | Starting year 2 or 4 |
| Board Composition | Seats for Major Stakeholders, some non-voting seats | At large seats added; all seats vote. Advisory committees to advise Board |
| Board Selection | Board –Elected Membership | First Board approved by City Council, then Board elected via nominations for stakeholder seats. |
| Bylaws | Not written | Bylaws proposed reflecting proposals for Board composition and selection process |
| | | |

| | | |
|---|---|---|
| City Oversight | Contract between BID and City Council renewed annually; yearly independent audit and quarterly report to City Council. | Same. City Council Board member (or appointee) now a voting seat. |

As proposed, the BID service objectives would require a tax rate increase within the district in a range between 5 and 7 cents per hundred. The revenue plan as proposed would also require city general fund allocations per year between $46,063 and $64,488. Likewise, county participation is expected in the range of $118,932 and $166,505.

The Interim Board asks "that City Council approve the district immediately so we (Interim Board) can begin the work on a final bid and contract." A resolution establishing the district boundaries and services is attached. In addition to establishing the district as proposed, the resolution communicates Council's intent to levy an additional tax on property within the district, in an amount to be determined and included in the City's annual budget, beginning in Fiscal Year 2013-14."

Mayor Bellamy said that this public hearing was opened on June 12, 2012, and continued until this date. She then continued the public hearing at 7:34 p.m.

Mr. Peter Alberice, Co-Chair of the Interim Board (downtown resident and property owner), then reviewed a PowerPoint presentation while providing Council with a detailed overview of the Interim Board's work and their proposal. Since the June 12, 2012, City Council meeting, the Interim Board worked on another public meeting; boundaries; services/ ambassadors; budget based on RFIs; by-laws; board composition and representation; board selection process; advisory committees; and city oversight and agreements. He asked for Council's support to approve the resolution allowing the formation of the BID Tax District. City Council will still retain authority to approve the Board of Directors, approve the by-laws, approve the Tax Assessment Rate, and approve the annual budget. There will also be a 3-year sunset clause. If Council does approve the BID formation, the next phase will include (1) approve a permanent Board no later than December 15, 2012; (2) direct the Board to work with City staff on an RFQ for services to be released in winter, 2013; (3) direct the Board to submit a proposed budget and services plan no later than May 2, 2013; (4) Board members and staff will draft a contract outlining the relationship, duties and responsibilities of the City and the BID; and (5) City Council has review and approval of the BID budget and tax rate, which would be set during the 2013-14 budget process. He asked for Council's support and affirmative vote for the downtown BID.

The following individuals spoke in support of the downtown BID for several reasons, some being, but are not limited to: BID's exist in over 1,000 cities nationwide and we can learn from these cities; we have leaders in our community that can lead this non-profit board to make some creative changes; a BID will help create smaller businesses to grow; the BID will improve services downtown; the City can't meet some of the burden on infrastructure from visitors and residents; the BID Report has been worked on for 3 years; there are many, many benefits of a downtown BID; the BID Report is the result of thousands of hours of work by dedicated citizen volunteers who love downtown; the money for the BID will be for the entire downtown; the permanent board can work with non-profits and governmental agencies to see if they would be willing to help participate with a payment in lieu of taxes to assist with this effort; streets and sidewalks are not offensive to tourists and these are basic City services; we can't attract more businesses to a decaying downtown; and BID is the best way to protect the health and welfare of downtown:

Ms. Franzi Charen, Director of the Asheville Grown Business Alliance and member of the Interim Board

Ms. Rebecca Hecht, representing two small downtown businesses

Ms. Kim MacQueen, Co-Chair of the Interim Board (resident and property owner downtown)
Ms. Pam Weinkler, Secretary of DARN (resident and property owner downtown)
Mr. Larry Holt, property owner and downtown resident
Mr. John McKibbon, owner of Aloft Hotel
Mr. Adrian Vassallo, President of the Asheville Downtown Association
Ms. Susan Griffin, member of the Interim Board
Ms. Sally Cannon, downtown resident and former business owner
Mr. David Nutter, resident of Montford Area and former Director of the Denver, Colorado, BID at the time of it's formation and initial expansion

The following individuals spoke in opposition of the downtown BID for several reasons, some being, but are not limited to: BID Board does not represent small business owners; small businesses have struggled downtown during the recession and don't need additional taxes; it's not fair to place a 7-cent tax on small businesses in this economy; the BID report has changed so many times, small businesses have not had the opportunity to review it again and should be allowed to have input; don't let the BID hire a private security firm; it's not fair that one resident inside the BID district has to pay a fee and one resident in the block outside the BID district does not; suggestion to charge a small amount to everyone in the City to generate enough money to take care of the BID budget; no one is against making downtown a beautiful safer city, but issue is how it's to be funded; property values for residential units are much higher than commercial units; most small businesses and residents already take care of their property by removing snow, removing graffiti, keeping the lots clean, etc.; Asheville is unique by not being able to charge differential rates for water and our daytime population is twice that of our taxpaying population so our residents are already paying more; the large number of medical and non-profit agencies don't pay taxes so you have a small number of people in downtown paying more than their fair share of taxes already; the BID report shows that the average BID rate in the state is 15% so as time goes on there is the possibility of the 7-cent tax being increased; downtown residents should not be taxed as this is a "business" improvement district; adding this tax on small businesses downtown will make them raise their prices which will be a disaster to the homeless; is there no longer any City or County participation; small businesses are already taxed to the hilt; 58% of the people owning the property value will have to pay this tax because 42% are tax exempt and non-profit organizations that will not participate; what is the return on investment since property values are already starting to rise; opposed to putting taxpayer money in the hands of private individuals; has not seen a survey of the 300 small businesses downtown to ask if they want this tax; how is the success of the BID going to be measured; property owners will have to pass the tax increase down to their tenants; suggest a referendum so residents can vote for or against the BID; and suggestion that the money be given to Asheville Greenworks as they have done a wonderful job downtown:

Mr. Chris Peterson, downtown small business owner
Rev. Christopher Chiaronmonte
Mr. Ray Connaway, downtown resident
Mr. Colgate Darden, downtown resident
Ms. Leslee Kulba
Mr. James Challen, downtown resident
"Rage", homeless person
Mr. Alan Ditmore
Mr. Tom Flora, business and property owner downtown
Ms. Renee Owen
Ms. Christina Jiles, homeless person
Mr. Hunt Mallet, downtown business property owner and resident
Mr. Andrew Craig, small business and property owner downtown
Mr. Russell Thomas, co-owner of the Flat Iron Building
Mr. Bill McElvy, downtown business and building owner and representative of Patton Wall Condominium Association

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At 8:39 p.m., Mayor Bellamy closed the public hearing.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

On behalf of City Council, Mayor Bellamy thanked the Interim Board for their work on this project over the last three years. We know that the work was a labor of love and without you we would not have a lot of the things downtown, including the cleanliness of Pritchard Park, Downtown After Five, Oktoberfest, etc. And, she also thanked Project Manager Sasha Vrtunski for her leadership as well.

Councilman Bothwell felt that whether one favors the BID or not, this is a bad time to implement a new downtown tax. The County will be doing a revaluation and we don't know how that will affect the City. We have also been dealing with the struggles outlined in the City Manager's White Paper a few years ago. Restrictions on water rates and restrictions on growth of the City are causing serious revenue problems for the City. If the City has to raise taxes for the major city-wide projects, downtown residents and property owners will be very upset. Other reasons we should reject the BID is that Asheville is not dangerous or dirty. Crime statistics show that Asheville is safer than other cities our size in the state. A street sweeper would be nice, but that is a huge capital investment that the BID does not address. The BID proponents not only want to raise taxes on their downtown neighbors, they want to get money from general revenues from the City and County and the Fire Districts across the County. And, it is wrong to give tax money to an unelected board, as seen by the Pack Square Conservancy and the Grove Arcade Public Market Foundation.

Vice-Mayor Manheimer made it clear of what Council is considering – the results of a grassroots effort (a body of downtown folks who wanted to propose a BID and brought the proposal before Council). At this meeting, City Council is being asked to adopt a resolution that designates the geographic boundary of a BID, designates the potential services a BID could provide, roughly states how the permanent board would be made up, and states the intention that this BID be funded through, among other things, a property tax. The resolution doesn't ask for the tax to be implemented at this time. The resolution is to implement the shell of something that will later have to be funded. The proposal is a 7-cent property tax increase on the City property taxes. An example would be if you have a $500,000 property that would be $350 a year.

Vice-Mayor Manheimer moved to adopt the resolution creating a downtown Municipal Service District, also known as a Business Improvement District, in downtown Asheville, with the following amendments: (1) addition of two services that could be provided: recycling and sidewalk repair over and above what is already provided downtown; (2) if the resolution passes, it would authorize the City to enter into contract negotiations with the entity that is formed (Asheville Downtown Incorporated) and the contract would have to include the list of services to be provided and also in that process you would have to figure out the exact cost of those services; (3) because the resolution states "that a permanent board of directors for the municipal service district be appointed not later than December 15, 2012," it doesn't state how the initial permanent board of directors would come into being and therefore, she suggested we create a nominating committee of two Council members and three Interim Board members and the five of those appoint two additional people to bring a recommended slate of initial permanent board members to City Council (prior to December 15, 2012); and (4) If the resolution is adopted and a contract were to be negotiated, she would include in her motion that in order for that contract to be amended in the future that City Council would have to vote on that and that the by-laws of the entity (Asheville Downtown Incorporated) be attached to the contract and that if the by-laws are amended that would also have to be approved by City Council. The by-laws will include the board make-up within its text.

Assistant City Attorney McGlohon said that the only issue she sees, as it pertains to the resolution, is that the law says that "the resolution defining a service district shall take effect at the beginning of a fiscal year, commencing after its passage." She did not think it would have an impact on the ability of the permanent board to be appointed not later than December 15, 2012.

Vice-Mayor Manheimer said that what is included in the resolution is that Council is not funding the district yet and it's not the intention to consider the funding until our normal fiscal cycle, which would put it in place effective July 1, 2013.

The motion made by Vice-Mayor Manheimer was seconded by Councilman Pelly.

Councilman Hunt asked for a friendly amendment that would specify that City Council would appoint no less than 1/3 of the permanent board members after the initial Board members terms have expired. Vice-Mayor Manheimer accepted the friendly amendment in that the permanent board make-up after the initial board will be included in the by-laws which can be further vetted through the City Council Boards & Commissions Committee. Councilman Pelly also accepted the friendly amendment.

Mayor Bellamy could not support establishing a BID at this time. If it is going to be considered, it should be considered with the budget process. Council's Strategic Operating Plan over the last 4 years doesn't address all of the needs brought forward. We have made major investments in our top priorities, i.e. Eagle-Market Streets Redevelopment, riverfront redevelopment, sustainability efforts, transit system, etc. We have not put in a comprehensive look at our Downtown Master Plan. We have not put in the resources to see it fully implemented. She believed that when it comes to streets and sidewalks, City staff will do a great job opposed to contracting with another group. She challenged the City Manager's Office to work on a budget to address these issues. Staff pulls together resources for City Council top priority items. She felt that we have done the downtown a disservice by not having it as a true priority. Thinking holistically, we don't know what is going to happen to our water system (how it will impact our budget), we don't know the bottom line of the RADTIP, we don't know how the County's revaluation will impact our taxes, etc. In addition, she could not support an independent board. The City has paid off two parking decks in downtown Asheville and paid off the debt service on Pack Place in downtown Asheville. That alone should help us find some revenue to help with downtown services. Downtown is a major driver of our property tax for the entire City. We need to give some of that money back for clean, green and safe. She was given a list of places to call regarding their BIDS and talked to the mayors of those cities. She said most of the BIDs were created to help spur redevelopment – ours is clean, green and safe. The other major issue they have used the BID for is for safety and enhanced services. If the Ambassador program is off the table, then the only reason for the BID is clean and green. She believed we should challenge our staff to look at our priorities and make the downtown a priority for a cleaner, greener and safer above the services we currently provide. She felt those services are a basic City service and it's our responsibility.

Councilman Smith agreed that we have some big challenges over the next year's budget, including salaries, affordable housing, transportation efforts, infrastructure needs, the riverfront redevelopment, downtown, and not knowing the budget projections. He was not sold on the need for the ambassador program, but neglecting downtown is not an option. When an area generates 75% of the sale tax for the County then we have to do what it takes to make sure that we are valuing it. As to return on investments, he will look forward to seeing what those measurements would be. He would look to see if it would increase sales tax revenues, graffiti reduced, and recycling and trash pick-up improved. He felt Council should legitimize the BID board for them to move forward and do more preparatory work in order for this Council to make wise budget decisions next year. He asked for a menu of options for an array of possible revenues. Until we see what we are working with, he was not comfortable with committing to any tax increase.

Councilman Pelly said it is never easy to consider a proposal to increase taxes, especially for a select group. Regarding putting public dollars in private hands, the amendment was that at least 1/3 of the permanent board members would be approved by City Council. And, City Council will be approving the tax rate for the BID. It's important to note that there is a 3 year sunset clause that if this is not working, the BID will go away unless it's renewed. He too was interested in how do we measure success with the BID. He would look for the BID Board to provide a matrix at the end of each year to see how that is happening. He said the clean, green downtown will benefit not only businesses, but residents. If the resolution passes we will be creating the skeleton for the BID and the tax rate will be determined at a later date. For those who are opposed to the BID, and if it passes, he encouraged their participation to help define the way the BID moves forward.

Councilman Davis said that 28 years ago he invested in downtown. City Council did authorize the Downtown Master Plan and the BID is a part of the Master Plan. We owe it to the people who worked hard to get this to this point, he would be willing to make that commitment for three years.

The amended motion made by Vice-Mayor Manheimer and seconded by Councilman Pelly carried on a 5-2 vote, with Mayor Bellamy and Councilman Bothwell voting "no."

Vice-Mayor Manheimer moved to appoint Councilman Davis and Councilman Hunt to the nominating committee for appointments to the initial Board. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 25 – PAGE 112**

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 12-232 - RESOLUTION APPOINTING MEMBERS TO THE HOMELESS INITIATIVE ADVISORY COMMITTEE**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Homeless Initiative Advisory Committee.

The terms of Richard Letterman and Celeste Collins expire on November 1, 2012. In addition, Chris Sullivan has resigned, thus leaving an unexpired term until November 1, 2014.

The following individuals have applied for a vacancy: Debbie Metcalf, Timothy Sadler, Charles Rosenblum, John Spears, Charles Barber, Shana Roberts and Cynthia J. Sellers.

It was the consensus of the Boards & Commissions Committee, at the suggestion of the Homeless Initiative Advisory Committee, to reappoint Mr. Letterman and Ms. Collins and appoint Mr. Charles Rosenblum.

Councilman Bothwell moved to reappoint Richard Letterman and Celeste Collins to each serve an additional three-year term, terms to expire November 1, 2015, or until their successors have been appointed. This motion was seconded by Councilman Davis and carried unanimously.

Because Mayor Bellamy felt there should be more diversity on this Committee, it was the consensus of Council to arrange interviews for Charles Barber and Charles Rosenblum. If the City Clerk could not reach Mr. Barber for an interview, it was then the consensus of Council to re-advertise for the vacancy.

**RESOLUTION BOOK NO. 35 – PAGE 115**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Rev. Christopher Chiaronmonte spoke about the homeless issue in Asheville.

In response to Ms. Shirley Dozier, who asked that the City to close on the property (Tract 3) that the City sold to them in 1997, Mayor Bellamy said that the City Attorney's Office would investigate and respond to her request.

Mayor Bellamy thanked City Manager Jackson for the City's assistance when Vice-President Biden spoke in Asheville, during the Democratic National Convention held in Charlotte, and their upcoming assistance with Governor Romney's visit to Asheville.

**Closed Session**

At 9:25 p.m., (end of the formal meeting), it was the consensus of Council to go back into closed session.

At 9:31 pm., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Hunt and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 9:31 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

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Tuesday – October 23, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Vice-Mayor Manheimer gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING OCTOBER 24, 2012, AS "FOOD DAY"**

Councilman Smith read the proclamation proclaiming October 24, 2012, as "Food Day" in the City of Asheville and briefed Council on some activities taking place during the day.

Mayor Bellamy thanked Councilman Smith, the Asheville-Buncombe Food Policy Council, and the other various community partners for their participation and leadership for locally grown food.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 9, 2012**

**B. RESOLUTION NO. 12-233 - RESOLUTION ENDORSING THE BUNCOMBE COUNTY GREENWAYS AND TRAILS MASTER PLAN**

Summary: Buncombe County has recently completed a Greenways and Trails Master Plan Update. Buncombe County Parks, Greenways and Recreation Services worked with a representative of the City of Asheville throughout the planning process. The planners conducting the study received a considerable amount of input from interested citizens of the City of Asheville through an online survey and public meetings. The plan proposes several corridors within the city limits of Asheville that will connect the city neighboring towns and points of interest. A countywide system of connected trails and greenways will provide recreational opportunities; increase health benefits by the provision of access to more physical activity opportunities; increase traffic safety with bike and pedestrian infrastructure; and increase economic prosperity for the City of Asheville through increased jobs, increased housing values and increased tourism and local spending by travelers of a greenway. City Council is of the opinion that it is in the best interests of the citizens and residents of the City to support this plan that proposes countywide greenways with connected trails. That the City Council hereby expresses its endorsement of the Buncombe County Greenways and Trails Master Plan.

**RESOLUTION BOOK NO. 35 – PAGE 116**

**C. ORDINANCE NO. 4124 - SECOND AND FINAL READING OF AN ORDINANCE AMENDING TO THE FRANCHISE AGREEMENT WITH THE EDUCATION RESEARCH CONSORTIUM**

**ORDINANCE BOOK NO. 28 – PAGE 1**

**D. RESOLUTION NO. 12-234 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER WITH BROWN AND CALDWELL FOR THE WATER RESOURCES ASSET MANAGEMENT PLAN UPDATE**

Summary: The consideration of a resolution authorizing the City Manager to execute a change order with Brown and Caldwell in the amount of $69,969 to increase the professional services contract for the Water Resources Asset Management Plan Update from $99,880 to $169,849.

On September 27, 2011, City Council awarded a professional services contract to Brown and Caldwell for the Water Resources Asset Management Plan Update. Since completion of the $40 million revenue bond projects and numerous other capital improvement projects, an update to the RPM and Asset Management Plan was needed to update the asset inventory, R&R schedule, and capital project plan. A change order is needed to incorporate data from Munis and the SCADA Historian in order to access water consumption, water production and water revenue data to develop the priority Asset Information Management System (AIMS) dashboard reports. When the City transitioned from H.T.E. to Munis, the links to the data were broken and Brown and Caldwell needs to reestablish those links in order to access the data needed for the Asset Management Plan Update.

The total additional fee for this change order is $69,969, which will bring the total contract amount to $169,849.

This project is part of City Council's strategic plan to maintain city infrastructure and to operate the City of Asheville to the highest levels of fiscal responsibility.

Pro:

- Approval of the change order will allow Brown and Caldwell to incorporate Munis and SCADA Historian data into the AIMS, thereby creating easier access to customer, work order, and financial information.

Con:

- None.

The amount needed for this change order is currently available in the Water Resources Operations Fund.

City staff recommends City Council approval of the resolution authorizing the City Manager to execute a change order with Brown and Caldwell in the amount of $69,969 to increase the professional services contract for the Water Resources Asset Management Plan Update from $99,880 to $169,849.

**RESOLUTION NO. 35 – PAGE 117**

**E. ORDINANCE NO. 4128 - BUDGET AMENDMENT TO PURCHASE TWO BUSES FROM THE CITY OF GASTONIA**

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Summary: The consideration of a budget amendment in the amount of $44,074 from Transit Capital Reserves to purchase two 2004 35-foot Gillig buses from the City of Gastonia.

The City of Gastonia Transit Division no longer needs the subject buses, and they removed them from service on July 5, 2011. They were replaced with buses funded by ARRA funds. The City of Asheville has the opportunity to purchase both buses at a cost of $9,537 each (the buses originally cost $286,098 each) or a total of $19,074.

Once the buses are received, they will need some minor work before placing them into service. The work includes painting/striping on the outside, camera review equipment, radio system, and storage considerations. The estimated cost for this work for both buses is $25,000. Therefore, the total cost to purchase the two buses and prepare them service will be $44,074.

The current bus fleet includes 30-foot buses and there could be some challenges with larger buses on some of the routes due to narrow street widths and vertical grades. This purchase would give staff the opportunity to thoroughly test a larger bus on the various routes and it would provide good information and guidance to staff for future decisions regarding the size of the bus fleet. It is becoming more and more difficult to purchase smaller buses because many transit systems are using larger buses.

This action complies with the current City Council's Strategic Operating Plan in the fiscal responsibility focus area by operating the City of Asheville to the highest levels of fiscal responsibility.

This item has been reviewed and endorsed by the Transit Commission at a called meeting on October 10, 2012.

Pros:

- The acquisition of 35-foot buses will allow staff to test a bigger bus to serve the ART system without incurring the cost of buying new ones including identifying federal and state funding sources and following a procurement process.
- The buses will be placed in areas with high ridership and will provide a more comfortable customer experience.

Con:

- The purchase of the buses was not contemplated in the FY 2012-13 budget, therefore funding will have to be taken from Transit Capital Reserves.

There is currently $57,000 available in Transit Capital Reserves that has accumulated from projects that came in under budget. Staff is recommending that Council appropriate $44,074 from the reserves to cover the cost of the purchase and outfitting of the two buses. After this appropriation, there will be approximately $13,000 available for future allocation.

Staff recommends that City Council approve a budget amendment in the amount of $44,074 from Transit Capital Reserves to purchase two 2004 35-foot Gillig buses from the City of Gastonia.

**ORDINANCE BOOK NO. 28 – PAGE 6**

**F. ORDINANCE NO. 4129 - BUDGET AMENDMENT FOR THE ACQUISITION OF REAL PROPERTY AS NEEDED**

Summary: The consideration of a budget amendment in the amount of $825,000 from Parking Services Fund reserves for the acquisition of real property as needed.

This budget amendment establishes a budget within the Parking Services Fund for the purchase of real property as needed for parking services for the City of Asheville. Real estate acquisition during a period of favorable market conditions will benefit the City by maximizing the value of the purchase price paid.

For budgeting purposes, a total estimated project budget has been set at $825,000 to include cost of acquisition, survey, and legal fees.

This action complies with the City Council Strategic Operating Plan by demonstrating fiscal responsibility through maximizing the value of real property assets.

Pro:

- Current real estate market has allowed for opportunities to purchase real property at favorable purchase prices

Con:

- Requires an appropriation from the Parking Services fund balance

Funds will be appropriated from the Parking Services Fund's reserves. Based on current estimates, the Parking Services Fund has $1.16 million in reserves. The City's financial policy requires the fund to maintain 8% of its operating budget in reserves, or about $182,000. This budget amendment will reduce reserves to approximately $335,000, or 14.8% of the operating budget.

City staff requests City Council adopt a budget amendment of $825,000 for the acquisition real property related to parking.

**ORDINANCE BOOK NO. 28 – PAGE 8**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Bothwell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. ASHEVILLE SISTER CITIES UPDATE

Mr. Russ Martin, Vice-President of Asheville Sister Cities, was pleased to update City Council on the activities of Asheville Sister Cities.

Ms. Karon Korp, Chair of the Valladolid Committee of Asheville Sister Cities, stated that Asheville has 6 Sister Cities – Vladikavkaz, Russia; San Cristobal de las Casas, Mexico; Sumur, France; Karpenisi, Greece; Valladolid, Mexico; and Osogbo, Nigeria. She then updated City Council on their recent projects and activities. The programs, projects and partnerships of Asheville Sister Cities have a direct economic impact on western North Carolina. Through the dedication of this vibrant volunteer organization, Asheville reaches around the world, and brings it home, making a difference in so many lives. Their mission is to promote peace, understanding, cooperation and sustainable partnerships through formalized agreements between international cities and the City of Asheville, North Carolina. She thanked City Council for their support and provided them with a packet of information regarding Asheville Sister Cities.

Ms. Valeria Watson-Doost was pleased to talk about their project in Osogbo, Nigeria, and presented Mayor Bellamy with a flag, plaque and a painting from one of their local artists from the Osogbo Sister Cities Association. She also presented the Mayor with a certificate from the President of Valladolid, Mexico.

On behalf of City Council, Mayor Bellamy thanked the Board of Directors Asheville Sister Cities Inc. for the relationships they have built across the globe on behalf of Asheville.

**B. CIVIC CENTER COMMISSION UPDATE**

Economic Development/Civic Center Director Sam Powers was pleased to introduce Mr. Chris Corl as the new General Manager of the U.S. Cellular Center.

Mr. Corl said that he was excited to be in Asheville and looked forward to working with City Council. On behalf of City Council, Mayor Bellamy welcomed Mr. Corl and his family to Asheville.

Civic Center Commission Chairman Mike Burke introduced the new General Manager Chris Corl. He then updated City Council on (1) how their activities align with City Council's Strategic Operating Plan, (2) the renovations to date; and (3) the Phase II renovations including renovating and relocating the Box Office' renovating the main lobby; new exterior entrance to ExploreAsheville.com Arena; additional storage; renovating Concourse and Arena Floor restrooms; renovating Thomas Wolfe Auditorium lower lobby; and upper seating bowl industrial cleaning. He explained how they offer diversity from the 2011 events; and their partners. He briefly outlined the significant future opportunities.

On behalf of City Council, Mayor Bellamy thanked Mr. Burke for his leadership and the entire Civic Center Commission for their hard work on this Commission.

**C. CIVIL SERVICE BOARD UPDATE**

Civil Service Board Chairman Larry Harris updated City Council on the activities and mission of the Civil Service Board. He was happy to report that in the past year no grievances have been heard by the Board.

On behalf of City Council, Mayor Bellamy thanked Mr. Harris for his leadership and the entire Civil Service Board on their hard work on this Board.

**D. WATER RESOURCES UPDATE**

Project Manager Phil Kleisler updated City Council on the Water Resources process update from October 9 - 23, 2012. The October 30, 2012, water/sewer analysis meeting has been cancelled and will be rescheduled due to the various studies from the City, MSD and the City of Hendersonville will not be completed by October 30. Staff and Raftelis continue to work on the financial analysis and governance models. Regarding the MSD Study, on November 1 the draft report will be presented to the MSD Planning Committee and on November 14, the final report will be provided to the MSD Board. He then provided Council with the information sharing between the City and MSD.

**IV. PUBLIC HEARING:**

**A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON 671 SAND HILL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT TO ALLOW THE CONVERSION OF AN EXISTING CHURCH INTO A PRIVATE SCHOOL, AND A REQUEST FOR MODIFICATIONS TO THE LANDSCAPE STANDARDS**

**ORDINANCE NO. 4130 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED ON 671 SAND HILL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT TO ALLOW THE CONVERSION OF AN EXISTING CHURCH INTO A PRIVATE SCHOOL, AND A REQUEST FOR MODIFICATIONS TO THE LANDSCAPE STANDARDS**

Urban Planner Alan Glines said that this is the consideration of an ordinance to conditionally zone the New Classical Academy located at 671 Sand Hill Road from RM-6 Residential Multi-Family Low Density District to Institutional District to allow the conversion of an existing church into a private school, and a request for modifications to the landscape standards. This public hearing was advertised on October 12 and 19, 2012.

Mr. Glines said that this proposal is to establish a private school within an existing church structure. The conditional zoning application is needed in this case for two reasons; First, although schools are allowed under the existing RM-6 residential zoning (as a USSR), the minimum lot size is 2 acres (the actual lot size is 1.91 acres) and variances are not allowed for USSR's. The second reason is that the project is requesting a modification for a property line landscape buffer along the east side of the parcel and the conditional zoning process allows City Council to modify certain requirements with the approval of a proposed site plan. The New Classical Academy is operating in Weaverville at this time and is proposing to relocate to this site for their 40 students in grades K-8. The site currently has a church building totaling about 3,400 square feet on two levels. The building will be modified to meet building code standards for school uses while maintaining some capacity for operation of the church. It is not proposed to be expanded. Playground space on site will also meet state safety standards and requirements.

The site is a 1.91 acre parcel that slopes up gently from Sand Hill Road. The existing driveway is shared with a residential community of 46 homes behind the lot. The location along Sand Hill Road is good for a school use from an access standpoint and the site provides ample room to provide for parking needs and outdoor play space.

The school currently has an enrollment of 40 students and would like to eventually grow to a maximum of 60 students. The existing facilities are expected to be able to accommodate this future increase because the existing parking area is ample and could be expanded if necessary. The traffic demands from future growth could also be managed using the existing driveway. If the school should grow beyond 60 students, then a traffic management plan will be required to be submitted for analysis by appropriate City staff.

As was noted before the project is seeking approval for a modification from normally required property line buffer plantings along the east side of the property. This is requested because there is insufficient space along the edge of the existing driveway and the property line to buffer the residences on that side. Staff supports this request because it is an existing driveway that serves several uses. The school use is generally compatible with residential uses and the existing residential uses already have some landscape material planted along the property edge that provides screening.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed school activity is not expected to endanger public health or safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** This site that slopes up gently from Sand Hill Road. The existing building will be renovated to accommodate the school use.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** A school is compatible with the character of the neighborhood and is not expected to injure the value of neighboring properties.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The existing church building and the school will operate within this structure. While the building is larger than some of the homes in the community, it is in-scale with the general development pattern of the neighborhood.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The project is an adaptive use of an existing building and meets city adopted goals of sustainability and higher density development where infrastructure is in place to support the development.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Sand Hill Road is a collector street in the west area of Asheville and can handle the traffic volumes. All of the utility and safety related infrastructure is sufficiently present in or serves this area.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The proposal has been reviewed for traffic safety concerns which can be safely handled by Sand Hill Road.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable because it meets City adopted goals for adaptive reuse of existing properties where infrastructure is in place to support the proposed activities.

This conditional zoning request was recommended for approval by a 7-0 vote at the Planning and Zoning Commission. There were no members of the public present at the meeting to speak about this proposal.

Pros:

- An existing building will be more fully utilized
- The property is positioned for convenient access to transportation systems
- The proposed use is compatible in a neighborhood setting

Con:

- The existing site configuration limits the ability to fully comply with standard landscape buffers for a portion of the site

Staff recommends that the application be approved with the conditions outlined in the staff report and the Technical Review Committee report because the use is appropriate to that site and to the neighborhood in which it is located.

Mayor Bellamy opened the public hearing at 5:47 p.m. and when no one spoke, she closed the public hearing at 5:47 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Manheimer found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4130 , to conditionally zone the New Classical Academy located at 671 Sand Hill Road from RM-6 Residential Multi-Family Low Density District to Institutional District to allow the conversion of an existing church into a private school, and approval of the buffer line modifications noted on the plan, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) Any changes to the existing building size or orientation be reviewed for compatibility with the approved plans; and (5) Should the school grow beyond 60 students the school administrator will submit a traffic management plan for analysis by the appropriate City departments. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 10**

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**A. ORDINANCE NO. 4131 - FIRST READING OF AN ORDINANCE GRANTING A FRANCHISE AGREEMENT FOR THE OPERATION OF A PEDAL BICYCLE TAXI SERVICE WITHIN THE CITY OF ASHEVILLE**

Director of Transportation Ken Putnam said that this is the consideration of an ordinance granting a franchise agreement for the operation of a pedal bicycle taxi service within the City of Asheville.

City staff has been working with a citizen that is interested in starting a pedal bicycle taxi service within the City of Asheville under the business name of Asheville Bike Taxi, LLC. The service would be allowed in the Central Business District, the River Arts District, and the Historic Montford District. In addition, it would be allowed to use SR 3548 (Clingman Avenue) from Clingman Avenue Extension to Hilliard Avenue in order to gain access to the River Arts District. The North Carolina Department of Transportation has confirmed that the subject service can use state-maintained streets except for fully-controlled access streets like the interstate system.

The service is prohibited from operating on public streets that have a speed limit of 35 mph or higher. The one exception is the section of Clingman Avenue that provides access to the River Arts District. This section of street has a bicycle climbing lane and the pedal bicycle taxis are required to use it.

The hours of operation are limited to between 9:00 am and 3:00 am Monday through Friday and between 7:00 am and 3:00 am Saturday and Sunday. The City reserves the right to change the hours of operation at its sole discretion provided that we give a 30-day notice.

City Council approved a similar franchise agreement during March 2008; however, the business model was not successful.

This action complies with the City Council's Strategic Operating Plan in the Job Growth and Community Development Area by supporting diversified job growth and business development.

This item has been reviewed by the Council's Public Safety Committee and it received the Committee's endorsement on September 24, 2012. The Public Safety Committee recommended removing the limitation of five pedicab vehicles.

Pros:

- Supports diversified job growth and business development.
- Provides alternative transportation choices in the downtown area.

Cons:

- No direct fiscal impact to the City.
- Could impact vehicular traffic flow.

There is no known fiscal impact for the subject franchise agreement.

Staff recommends that City Council approve an ordinance granting a franchise agreement to Asheville Bike Taxi, LLC for the operation of a pedal bicycle taxi service within the City of Asheville.

Mr. Fred English felt Asheville didn't need this type of service.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith moved for the adoption of Ordinance No. 4131. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 13**

**B. RESOLUTION NO. 12-235 - RESOLUTION APPROVING THE EARLY RELEASE OF HOUSING TRUST FUND LOAN FUNDS TO MOUNTAIN HOUSING OPPORTUNITIES FOR THE EAGLE-MARKET PLACE PROJECT**

**ORDINANCE NO. 4132 - BUDGET AMENDMENT TO APPROPRIATE FUNDING FOR THE LOAN DISBURSEMENT**

Community Development Analyst Randy Stallings said that this is the consideration of a resolution approving the early release of Housing Trust Fund (HTF) loan funds to Mountain Housing Opportunities (MHO) for the Eagle Market Place project; subject to approval of exceptions to current policy and Housing and Community Development Committee conditions of approval; and a budget amendment in the amount of $300,000 from Housing Trust Fund reserves to appropriate funding for the loan disbursement.

The Housing and Community Development Committee has reviewed a request from Mountain Housing Opportunities to proceed to Housing Trust Fund loan closing on the Eagle Market Place project. Several exceptions to current program guidelines by City Council are required to facilitate this request. City Council approved a HTF loan of $300,000 to the project in March 2011. Funds have been held in reserve since that time awaiting approval of state tax credits. The tax credit award was received on August 23rd. In addition to the Housing Trust Fund loan, the project was also awarded $462,600 in HOME funds and $1 million in a future funding commitment.

Exception number 1: MHO is requesting that all funds be made available to reimburse predevelopment expenses that have been incurred to date. These soft costs include option fees, building permits, architectural design, engineering, surveying, environmental reports, market studies and legal fees. Current policy requires that all HTF funds be used for hard construction costs and/or land acquisition only.

Exception number 2: Current policy requires that all funds be drawn down proportionately with other funding sources and funds are to be disbursed at closing only for land acquisition. MHO is requesting that all funds be made immediately available at loan closing.

Exception number 3: Current policy requires a third party appraisal and verification of senior loan terms prior to our subordination to another lender. These documents have not yet been provided. Staff analysis has been based solely on the tax assessed value and proposed loan terms provided by the developer. A proposed term letter has been provided by a local lender; however, the developer will remain in communication with other local lenders to obtain the most favorable terms. The developer has agreed that the final determination of value and verification of senior loan terms can be provided prior to closing.

Risk Analysis: The developer has provided a copy of the market analysis prepared in March 2012. Once the project is fully completed, an estimated 1.4% capture rate and anticipated vacancy rate below 1% provide a very favorable outlook for project success. The highest risk on this transaction, as with all new construction, is at the front end of the deal when the existing collateral is likely insufficient to support the outstanding debt. This is especially true in the early stages of development. The risk to the City will decrease substantially over time as the construction progresses and the property value increases.

The determination of value in this request is critical to the decision to release funds. The project consists of five (5) parcels that will be deeded to Eagle Market Place, LLC at closing and aggregated under one Property Identification Number for development. Four (4) of these parcels have been donated by Eagle Market Street Development Corporation. The remaining parcel (42 S. Market St) is under contract. The current tax assessed value for all five (5) parcels (exclusive of buildings slated for demolition) is $1,962,710. The estimated appraised value as indicated by the developer is in the range of $2.3 to $2.5 million; however, staff has not yet been provided a third party appraisal.

The developer has suggested a bank loan of $1,070,000 with the City and County releasing $300,000 each from their HTF loan commitments. The Combined Loan to Value ratio based solely upon the current tax assessed value would be 85% at the proposed loan amount. An "as is" appraised value of $2.3 million would result in a Combined Loan to Value ratio of 72.6%. A ratio below 75% is considered the industry standard. Staff feels this amount of risk is tolerable but still significant given the undeveloped status of the collateral. It is anticipated that a current appraisal will exceed the tax assessed value of the property; however, true market demand cannot be fully ascertained given the unique nature of the site. The recent completion of the A-Loft hotel provides at least some benefit as a comparable project, and Staff would note that the prime location of the property should be attractive to investors in the event the project were unable to secure the necessary financing for beginning construction.

Additional Requirements: At their October 11th meeting, the Housing and Community Development Committee recommended that the following terms and conditions should be met prior to loan closing as a condition of approval:

1. Funds to be released for reimbursement of "soft costs" in the amount of $300,000. MHO to provide copies of paid invoices and/or copies of canceled checks for all predevelopment services provided prior to closing.

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2. Funds to be released at closing for purposes other than land acquisition. The City must be provided a minimum of ten (10) business days to process check request.
3. MHO to draw all funds immediately rather than on a proportional basis with other funding sources.
4. Closing subject to receipt of firm Commitment Letter from a local lending institution at a loan amount of no more than $1.3 million.
5. Closing subject to receipt of satisfactory property appraisal(s) for all five (5) parcels comprising the project development area. Combined Loan to Value (CLTV) is not to exceed 80%.
6. Seller to pay delinquent taxes in the amount of $14,454.39 at closing from sale proceeds.
7. MHO to provide a Draw Schedule reflecting timing and amount of anticipated disbursements from all funding sources prior to closing.
8. MHO to provide copies of Uniform Relocation Act (URA) disclosures provided to current tenants.
9. Closing is conditional on the satisfaction of additional requirements that may appear in the firm Commitment Letter from a local lending institution.
10. Closing Agent to provide Preliminary Title Commitment reflecting aggregation of all five (5) development parcels under one Property Identification Number (PIN).
11. City of Asheville to close in second lien position.
12. Loan to close at the following terms: $300,000 at 2% annual interest-only payments, 20 year term.

The project directly supports the City's Strategic Operating Goals: (1) *Affordable*: The project proposal is supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville; and (2) *Sustainable*: The proposed project provides new housing units located near transit lines, higher urban development densities, and encourage higher standards of energy efficiency. The project also addresses the priorities of the Consolidated Strategic Housing & Community Development Plan by increasing the housing stock, providing affordable rental units, building high quality energy-efficient housing, and coordinating development with transportation and jobs.

Pros:

- The developer has successfully completed projects of similar size and scope, and has demonstrated sufficient organizational capacity to complete the project.
- Enables the developer to complete the land assembly necessary to begin construction.
- The City of Asheville is heavily invested in the success of this project.
- Allows the developer to keep debt service lower throughout the construction period.

Cons:

- Requires numerous exceptions to existing policies and guidelines.
- Significant risk to the City throughout the construction period.
- Other lenders are not sharing proportionately in that risk.
- Staff is unable to adequately evaluate the collateral without a current appraisal report.
- Taxes on the subject property are currently delinquent.
- Approval would create a precedent that may affect future requests of a similar nature.

As noted above, the loan was approved in a prior fiscal year. In order to disburse the funds in the current fiscal year, a budget amendment in the amount of $300,000 is needed to appropriate the funds from the Housing Trust Fund reserves. There will be no fiscal impact at the present time; however, approval of higher risk loan activities does increase the potential for future loan losses in the event of default.

The Housing and Community Development Committee recommends approval of the request subject to the stated terms and conditions.

Ms. Kathryn Mitchell, representing the Riverfront Development Group, a North Carolina non-profit at 2 South Pack Square, said that she sent an e-mail to City Council outlining their

objections to these actions. Among other objections, their main objection is that state and federal laws prohibit and limit the transfer of substantially all of the assets of a non-profit corporation to a for-profit business corporation, which the Eagle-Market Place Corporation is a standard business corporation and not a non-profit. The same requirement is made of the Internal Revenue Service. That requirement is that if substantially all the assets of a non-profit are to be disposed of, they must be disposed of to another non-profit entity, estate or an entity that will further its exempt purposes.

Ms. Stephanie Swepson-Twitty, President and CEO for Eagle-Market Streets Development Corporation, said that it is not all of Eagle Market Streets properties that are being brought into this project. Additionally, they have researched that this is not a reasonable objection and that these properties are being given for a charitable and low to moderate income benefit.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities, said that it is customary and ordinary for a tax credit development to be operated by a limited liability company, which the non-profits are managing members of. Property is not granted to a limited liability company, it is sold to the limited liability company. The investors put their cash in, in return for federal housing tax credits. That is the system of housing tax credits that was created by the Reagan Administration many years ago. It is customary and ordinary to be done this way.

City Attorney Oast said that to the extent that the objection is based on the conveyance or transfer of the property to an entity that is non-profit entity, as Mr. Dedman explained, in order for an entity to take advantage of tax credits, it has to be a for-profit entity. The way those are formed is for the non-profit entity to become the managing partner of an LLC, such that the non-profit continues control of the operations. It is not an unusual thing to do and a structure that exists in several instances downtown, e.g., The Grove Arcade. The objection raised causes him no legal concern. There are some risks to the request that is being made and those have been outlined by staff.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 12-235, subject to the terms and conditions stated above. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 118**

Councilman Smith moved for the adoption of Ordinance No. 4132. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 28– PAGE 119**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Ms. Elaine Poovey, representing residents in the Bear Creek Road community, requested traffic calming (speed bumps) on Bear Creek Road. At the approximate cost of $6-7,000 for 3 speed bumps, the community is willing to pay $2,000. After hearing that the Public Safety Committee will be discussing speed in neighborhoods at their November meeting and that Council will be looking at transportation pieces during the next budget cycle, Mayor Bellamy asked City Manager for an update on the Bear Creek Road residents request. Councilman Pelly also felt that if the City has a traffic calming policy, then they should make a commitment to implement it.

Rev. Christopher Chiaronmonte spoke to Council about goodness vs. bias.

Mr. Fred English, Haw Creek resident, spoke to Council about the topless rally.

Mr. Teddy Jordan, representing the Kenilworth Neighborhood Association, spoke about some of their successes in their neighborhood. She asked Council to schedule a community meeting in their neighborhood.

Ms. Shirley Dozier, resident on Montford Avenue, said that the papers she presented at the October 9 meeting have been given to the Legal Department for resolution; however, she said they have not contacted her and that the Legal Department could be a part of the problem. She recommended that City Council meet with her on the site so she can explain her problem to them.

Mayor Bellamy announced the board/commission vacancies for the month of November.

Councilman Smith welcomed Moogfest to the City this weekend and encouraged visitors to not only check out the acts, but eat at the local restaurants and drink our local beer.

Councilman Hunt said that he and Councilman Davis are members on the Nominating Committee for the Business Improvement District (BID) Board. He encouraged interested citizens to apply for one of the several seats on the BID Board. The deadline for application is November 16 and they can be found on the City's website, or through the City Clerk's Office.

Mayor Bellamy invited the community to the October 30, 2012, City Council Community meeting at the Shiloh Recreation Center at 6:30 p.m.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 6:24 p.m.

CITY CLERK

MAYOR

Tuesday – October 30, 2012 – 6:30 p.m.
Shiloh Recreation Center

Community Meeting – South Asheville

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

Mayor Bellamy opened the meeting, welcomed the audience and introduced City Council members.

Assistant City Manager Jeff Richardson provided the audience with a brief overview of the City Council Strategic Goals.

Ms. Sophie Dixon, representing the Shiloh Community Association, was pleased to share the highlights of the Association including their re-organization, activities and partnerships. They appreciated the support of the City and were happy to do their part to make this a better Asheville.

Mayor Bellamy then opened up the meeting for questions. Questions/comments responded to by City staff and City Council consisted of (and those which could not be immediately responded to would be followed-up by City staff to the appropriate individual): appreciation for work on Overlook Road; hoped for continued efforts for improved traffic safety on Hendersonville Road; need for sidewalks along Hendersonville Road; request for bus benches along Hendersonville Road; request for resurfacing streets in Oak Forest; request for resurfacing streets in Shiloh community; the following requests in the Shiloh Community Center: a request for replacement of gym flooring, bleachers in gym, lighting in gym, replace bars in front of Center with windows, repair air conditioning, allow bathrooms open in the morning, resurfacing tennis courts, and replace lighting at ballfield; need for better planning for climate change, eco-crisis, and denser core area; need for bus service to new MAHEC building on Hendersonville Road; regarding Biltmore Park Town Center signage plan, request to have Council consider the brightness of the signs and allow signs for the Center itself and not specific tenants; support recent changes to leaf collection; need for City support composting leaves; need for portion of Rock Hill Road that lies in the City (from an annexation) to have sewer service and not septic tanks; and request for City support by funding their summer youth program.

Mayor Bellamy and Council members expressed their appreciation for the community involvement.

At 7:55 p.m., Mayor Bellamy adjourned the meeting.

Magdalen Burleson
CITY CLERK

MAYOR

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Tuesday – November 13, 2012 – 3:30 p.m.
Room 623 – City Hall

Joint Worksession with City Council and the Asheville Area Riverfront Redevelopment Commission

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Present: Chairman Ricky Silver, Councilman Jan Davis, Pattiy Torno, Joseph Ferikes, Cindy Weeks, Pam Turner, Daniel Hitchcock, Karl Koon, George Morosani, and Terry Meek

Mayor Bellamy and Chairman Silver both called the meeting to order of their respective bodies.

Mayor Bellamy remarked on the public-private partnerships specifically mentioning how the Depot Street is a prime example in the Riverfront Area.

Director of Finance & Management Services Lauren Bradley used a PowerPoint to describe Asheville's sustainable economic & community development initiative, outlining (1) the challenge of lagging growth, inadequate resources and inadequate investment; (2) opportunities for farsighted investments in land use and real estate assets, multi-modal and utility infrastructure, and downtown vitality and neighborhood revitalization; (3) goal of financial sustainability, community prosperity and environmental stewardship; (4) the approach of aligning partners around three goals (a) vibrant mixed-use neighborhoods; (b) downtown vitality; and (c) robust job growth; and (5) strategy for neighborhood vibrancy – river redevelopment - RADTIP. Revenues from possible sources include City/County sales tax, sale and lease proceeds; retired economic development incentives; General Fund and Enterprise Fund contributions; Synthetic Tax Increment Financing partnerships, and grants and entitlements, e.g., N.C. Dept. of Transportation, Housing & Urban Development, Environmental Protection Agency, Community Development Block Grant Funds, Housing Trust Fund, etc.

Transportation Planner Dan Baechtold provided those present with the River Arts District Transportation Improvement Project (RADTIP) update. He said an overview is that it is (1) a 2.2 mile section of the Wilma Dykeman Riverway; (2) improvements to two City of Asheville streets – Lyman Street and a portion of Riverside Drive; (3) road improvements, bike lanes, sidewalks, street trees, curb and gutter, on-street parking, and greenways; and (4) preliminary cost estimate of $25 Million. The current status is that (1) they are wrapping up a two-year process; (2) extensive public involvement and stakeholder input; (3) draft environmental document is complete; (4) preferred alternative has been selected; (5) preliminary designs are complete; and (6) final public workshop of this phase is scheduled for December 6. We are now at the end of a phase with the next phase to begin with acquiring the right-of-way for the project and develop partnerships.

Discussion was held between City Council and the Riverfront Redevelopment Commission. Chairman Silver asked for City Council to adopt a resolution in support of the RADTIP. Mayor Bellamy felt it is important to move forward and meet with local, state and federal agencies outlining RADTIP, its benefits and solicitation of funds to help support this vital project. Commission members felt there should be some certainty that RADTIP will occur so they can go out and solicit funds from various sources, including possibly a synthetic Tax Increment Financing District. Mr. Baechtold said that the federal environment document is good for three years; however, as long as they show forward progress it can be extended.

Next steps include (1) City Council adoption of a resolution in support of the RADTIP; (2) staff contact the Buncombe County Board of Commissioners to ask for their support of the RADTIP; (3) staff prepare a financial plan; (4) identification of funding sources; and (5) City staff to appear at the Riverfront Redevelopment Commission meeting to discuss improvements to operations at the Development Services Center.

At 4:45 p.m., Mayor Bellamy and Chairman Silver adjourned their respective bodies.

Tuesday – November 13, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Gordon D. Smith

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Bothwell gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF WARREN WILSON PRESIDENT DR. STEVEN L. SOLNICK**

Mayor Bellamy was pleased to recognize and welcome Warren Wilson President Dr. Steven L. Solnick to the City of Asheville.

**B. PROCLAMATION PROCLAIMING NOVEMBER 2012 AS "ADOPTION AWARENESS MONTH"**

Mayor Bellamy read the proclamation proclaiming November, 2012, as "Adoption Awareness Month" in the City of Asheville. She presented the proclamation to Ms. Tara Foster, Social Work Supervisor in Children's Services, who briefed City Council on some activities taking place during the month

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 23, 2012; AND THE COMMUNITY MEETING HELD ON OCTOBER 30, 2012**

**B. RESOLUTION NO. 12-236 - RESOLUTION SETTING A PUBLIC HEARING ON NOVEMBER 27, 2012, TO CONSIDER THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED IN THE FALCON RIDGE AT HAW CREEK SUBDIVISION**

Summary: The consideration of a resolution fixing the date of a public hearing on November 27, 2012, for the voluntary annexation of property located in the Falcon Ridge at Haw Creek Subdivision.

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The following property owners (with property identification number shown) have petitioned the City of Asheville for the annexation of twenty-one lots or portions of lots located in the Falcon Ridge at Haw Creek Subdivision.

| PIN Number | Address | Property Owner |
|---|---|---|
| | | |
| Portion of 9659.62-2222 | Common Area – No Address | Falcon Ridge at Haw Creek, LLC |
| 9659.53-8826 | 91 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.63-0863 | 85 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.63-1689 | 79 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.63-3527 | 71 Boulder Creek Way | Ridge View Homes, LLC |
| 9659.63-4456 | 63 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.63-5380 | 57 Boulder Creek Way | George Ryan Trust & Martha E. Ryan Trust |
| Portion of 9659.63-6014 | 51 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| Portion of 9659.62-3969 | 44 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| Portion of 9659.63-1047 | 125 Boulder Creek Way | Rebecca G. Mulzer |
| Portion of 9659.53-9062 | 123 Boulder Creek Way | Angela M. Erwin |
| Portion of 9659.53-8036 | 119 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.53-9275 | 120 Boulder Creek Way | George Ryan & Jean M. Ryan |
| 9659.53-9366 | Infrastructure – No Address | Falcon Ridge at Haw Creek, LLC |
| 9659.53-9607 | 92 Boulder Creek Way | John Allen & Patricia J. Allen |
| 9659.63-0548 | 82 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.53-9543 | 135 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.63-0486 | 133 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.63-1388 | 131 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.63-1292 | 127 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.63-3168 | 56 Boulder Creek Way | Emily S. Joyce Revocable Trust & Emily S. Joyce Trust |

The property to be annexed contains a total of 22.93 acres. The property is contiguous to the primary corporate limits of the City of Asheville. The area is subject to the standards for annexation of contiguous areas contained in NCGS 160A-31.

Pursuant to NCGS 160A-31, such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request.

The next step in this process is for the Asheville City Council to fix the date for the public hearing on this matter. Should the City Council decide to proceed with this request, the effective date for the annexation would be November 27, 2012.

Pros:

- Provides for the orderly growth of the City and the tax base through the acceptance of appropriate areas into the corporate limits where owners desire annexation.
- Complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas.
- Allows for service provisions for a new subdivision of which a part is already in the City enhancing the area with an urban level of service.

Con:

- Marginal costs for patrol.

At the City's current tax rate, the property, valued at $1,527,700.00, would generate approximately $ 6,416 annually. There are no financial impact or debt service payments required to a rural fire department as the area is currently serviced by the City of Asheville Fire Department under the Haw Creek Fire District agreement. The Fire Department has been receiving the .09/100 tax for servicing this area. This will no longer be paid by the property owners, thus the City will see a reduction in this revenue of $1,375. Therefore, the net financial gain for the City is $5,041.

City staff recommends that City Council adopt the resolution setting the date of November 27, 2012, for a public hearing on the annexation petition.

**RESOLUTION BOOK NO. 35 – PAGE 120**

**C. SECOND READING OF ORDINANCE NO. 4131 - ORDINANCE GRANTING A FRANCHISE AGREEMENT FOR THE OPERATION OF A PEDAL BICYCLE TAXI SERVICE WITHIN THE CITY OF ASHEVILLE**

**ORDINANCE BOOK NO. 28 – PAGE 13**

**D. RESOLUTION NO. 12-237 - RESOLUTION AUTHORIZING THE CITY MANAGER SIGN A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION APPROVING A PROJECT FOR MAKING IMPROVEMENTS ON I-40 FROM MILEMARKER 50 TO MILEMARKER 55**

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N.C. Dept. of Transportation (NCDOT) approving a project for making improvements on I-40 from milemarker 50 to milemarker 55 in Asheville.

The NCDOT plans to make improvements on I-40 from milemarker 50 to milemarker 55 in Asheville. The project, which is identified as I-5607, has a letting date of September 17, 2013. As a part of the agreement, the City agrees to effect the necessary adjustment of any utilities under franchise without cost to the NCDOT and to provide for the adjustment of any municipally-owned utilities without cost to the NCDOT, except that the NCDOT will reimburse the City in accordance with the NCDOT's Municipally-Owned Utility Policy. These requirements are standard requirements in all of NCDOT's Municipal Agreements and may or may not be applicable for a specific project. Since the City of Asheville does not have any utilities under franchise or any municipally-owned facilities within the specified section of I-40, this specific requirement is not applicable.

The NCDOT has confirmed that the subject municipal agreement does not require a financial commitment.

This action complies with the City Council 2012-13 Strategic Operating Plan by partnering with the North Carolina Department of Transportation (NCDOT) to make improvements to the existing street infra-structure.

Pros:

- A section of interstate highway will be improved.
- The NCDOT is funding and constructing the project.

Con:

- There are no identifiable cons.

There is no cost to the City.

Staff recommends that City Council approve a resolution authorizing the City Manager to sign a municipal agreement with the NCDOT formally approving Project I-5607.

**RESOLUTION BOOK NO. 35 – PAGE 121**

**E. RESOLUTION NO. 12-238 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CHANGE ORDER WITH HERSEY METERS CO. LLC (d/b/a MULLER SYSTEMS) FOR THE AUTOMATED METER READING PROJECT**

**ORDINANCE NO. 4133 - BUDGET AMENDMENT FOR THE AUTOMATED METER READING PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a change order with Hersey Meters Company, LLC (DBA Mueller Systems) in the amount of $600,000.00 to increase the general services contract for the Water Resources Automated Meter Reading (AMR) Project from $4,234,859.86 to $4,834,859.86; and a budget amendment in the amount of $600,000.00 from savings in other capital projects that were completed under budget.

On February 9, 2010, City Council authorized the City Manager to execute a general services contract with Hersey Meters to install approximately 52,000 AMR devices throughout the entire water system for a total project cost of $4,234,859.86.

Since beginning the project in 2010, two things have occurred to primarily account for this change order: (1) the water system has expanded to include approximately 53,000 water meters, which has increased the amount of meters to be replaced, the amount of AMR devices to be installed, and labor costs for installation; and (2) in August 2012, the Purchasing Department rebid the purchase of water meters, which increased the cost of every size meter by an average of 13%.

With this change order, Hersey Meters remains the lowest responsible bidder. The project is still expected to be completed by June 2013.

This project is part of City Council's strategic plans to improve city infrastructure.

Pro:

- Approval will allow the City to complete the AMR project.

Con:

- An additional $600,000.00 is needed to complete the project.

The $600,000.00 needed for this change order will be transferred from the General Projects capital project that accumulates remaining funds from Water Resources' completed, inactive capital projects. In order to use these funds, a budget amendment is necessary.

| | |
|---|---|
| Current Amount of Hersey Meters Contract | $ 4,234,859.86 |
| Amount Needed for Change Order | $ 600,000.00 |
| Total Amount for Hersey Meters Contract | $ 4,834,859.86 |

The amount remaining in General Projects will be reallocated to other capital projects as the need arises. Staff will seek Council approval on any future reallocation of these funds.

City staff recommends City Council approval of the resolution authorizing the City Manager to execute a change order with Hersey Meters Company, LLC (DBA Mueller Systems); and a budget amendment in the amount of $600,000.00 from savings in other capital projects that were completed under budget.

**RESOLUTION BOOK NO. 35 – PAGE 122**
**ORDINANCE BOOK NO. 28 – PAGE 21**

**F. ORDINANCE NO. 4134 - ORDINANCE AMENDING ORDINANCE NO. 4057 (REGULATING CAMPING ON CITY PROPERTY) TO CLARIFY "EMERGENCY"**

Summary: The consideration of an amendment clarifying ordinance regulating camping on City property.

On February 14, 2012, City Council adopted Ordinance No. 4057, which prohibits camping on City property without a permit. Sec. 12-51(b) of that ordinance provides that it "shall not be enforced when facilities are unavailable to provide emergency shelter to the public."

In some emergency situations, such as floods or fires, or major snow events involving power outages, it becomes necessary for governmental facilities, such as recreation centers, to be open to provide temporary housing to persons who are displaced by the event. The intent of this exception was to ensure that such uses would not conflict with the ordinance. However, the situations to which this exception applies are not further defined or described, and clarification has been requested.

With this in mind, the proposed amendment clarifies that the exception applies in situations where an emergency has been declared by an appropriate agency or official, and only to such facilities as that agency or official designates.

The proposed amendment supports the strategic operating plan goal of promoting public safety.

Pro:

- Clarifies application of recently adopted ordinance.

Con:

- None noted.

Adoption of the ordinance is recommended.

**ORDINANCE BOOK NO. 28 – PAGE 23**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. PRESENTATION OF THE EXTERNAL AUDIT OF THE FISCAL YEAR 2012 COMPREHENSIVE ANNUAL FINANCIAL REPORT

**ORDINANCE NO. 4135 - BUDGET AMENDMENT FOR ONE-TIME EMPLOYEE BONUS IN GENERAL FUND**

Mr. Brian Broom, Director of Dixon Hughes, PLLC, summarily reviewed with Council the annual audit. He said that the following is the audit and financial statement summary: "Our report for the 2012 audit expresses an unqualified opinion on the fair presentation of the basic financial statements in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our report can be found on Page 1 of the Comprehensive Annual Financial Report (CAFR). Our reports on compliance and internal control, in accordance with Government Auditing Standards, OMB Circular A-133, and the State Single Audit Implementation Act, disclosed no material weaknesses in internal controls and no instances of non-compliance in the administration of federal and state awards programs. Our compliance reports and a summary of the results can be found in the Compliance Section of the CAFR. Also, we noted some areas for improvement in the City's accounting function that they have communicated to management in a separate letter dated October 31, 2012." The audit was completed and submitted by the October 31 deadline.

Mayor Bellamy noted that the City ended their year with the fund balance back to 15.9%.

Ms. Judy Strong felt that the $650,000 should not be used for employee bonuses and should be used for appropriate expenditures in the next budget cycle.

Council members explained that City employees have gone without a raise for 3 years; that the one-time allocation is not added to the employees base pay; that this strategy was talked about months ago when the budget was adopted; that the allocation is made for all City employees; and that the City is taking a broader look at employee pay and the pay scale in order to make an educated decision about pay going forward.

The following is a staff report from Director of Finance & Management Services Lauren Bradley to Council: "The consideration of a motion to accept the FY 2012 Comprehensive Annual Financial Report (CAFR) and consideration of a budget amendment for a $650 one-time employee bonus requiring a total appropriation from General Fund unassigned fund balance in the amount of $650,000.

Brian Broom, CPA, director with Dixon Hughes Goodman LLP, will be present at City Council's November 13, 2012 meeting to deliver the City's Comprehensive Annual Financial Report (CAFR). Mr. Broom and I will provide City Council with a review of the audit and will be available to answer any questions from Council. Following the presentation, staff is requesting that City Council accept the FY 2012 CAFR and consider a General Fund budget amendment for a one-time employee bonus.

Staff will defer to Mr. Broom regarding his firm's findings. In addition, this staff report is intended to provide key highlights regarding the audit from staff's perspective. The City's financial statements, internal control, stewardship, accountability and program compliance with federal and state awards receive high marks.

The independent audit firm is required to conduct an analysis of the City's compliance with various federal and state laws, regulations, contracts and grant agreements. Dixon Hughes reviewed the City's accounting and administrative controls over a wide range of financial transactions such as cash, investments, revenues, receivables, expenditures, payroll, property, debt and grant programs.

Dixon Hughes found no deficiencies in internal control over financial reporting that they would consider material weaknesses and no instances of material noncompliance in connection with applicable statutes and regulations regarding expenditures of major federal and state financial assistance programs. This is the first time since 2009 that the City has received a "no deficiencies" report. This favorable report is due to the significant efforts of City staff and finance department employees in developing and maintaining strong internal financial controls.

***The independent external auditor gives the City a "clean" opinion on financial statements.***

Dixon Hughes has provided the City with an unqualified, or "clean," opinion that the financial statements are fairly presented in conformity with generally accepted accounting principles. This opinion is the highest form of opinion that the external auditors can express on the presentation of the City's financial statements.

***Audit submitted to Local Government Commission on schedule.***

As of October 30, 2012, the City had fully completed the audit process and was ready to submit its Comprehensive Annual Financial Report (CAFR) to the Local Government Commission (LGC) in compliance with its published October 31 deadline for submission, as well as City Council's direction to meet the deadline. As illustrated by the table below, completion and delivery of the CAFR by October 31 with presentation to be made at the November 13 City Council meeting is a significant improvement in timeline since 2006. Thanks go to the Finance Committee for its leadership throughout the audit process and to staff and Dixon Hughes for working diligently during the last several months to meet the schedule.

| Fiscal Year | Opinion Letter | Council Presentation |
|---|---|---|
| FY2012 | 10/30/2012 | 11/13/2012 |
| FY2011 | 10/28/2011 | 11/22/2011 |
| FY2010 | 12/28/2010 | 1/25/2011 |
| FY2009 | 11/12/2009 | 1/12/2010 |
| FY2008 (2) | 12/30/2008 | 2/10/2009 |
| FY2007 (1) | 10/31/2007 | 1/8/2008 |
| FY2006 | 10/27/2006 | 12/12/2006 |

(1) SAS No. 103
(2) SAS No. 104 - No. 111
SAS - Statement on Auditing Standards issued by the AICPA
Relates to risk assessment standards; effect of delaying the opinion letter date

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***General Fund revenues exceed expenditures.***

Due to a continued soft economy and uncertainty surrounding revenue projections, City staff implemented various savings strategies throughout FY 2012 to ensure the best possible General Fund operating results at year end. While revenues came in slightly above budget, expenditures came in under budget by $3,454,000.

During the year, $1,635,000 was appropriated from different categories of General Fund balance for FY 2011 encumbrances, demolition of an unsafe private property, and a Housing Trust Fund loan. For the year, including transfers out of $4,654,000, revenues exceeded expenditures by $2,152,000, resulting in a positive net increase in fund balance. Items that contributed to the net increase in fund balance include an improvement in sales tax collections ($818,000 positive variance which contributed to a net favorable impact of $363,000 in overall revenue performance), Housing Trust Fund appropriations that were made but not loaned during the fiscal year ($718,000 positive variance) and savings in contracted services ($771,000 positive variance).

The table below shows General Fund revenues, expenditures and changes in fund balance for FY 2012.

General Fund Revenues, Expenditures and Changes in Fund Balance (,000)

| | Original Budget | Final Budget | Actual Amounts | Variance with Final Budget- Postive (Negative) |
|---|---|---|---|---|
| Revenues | $ 87,696 | $ 86,865 | $ 87,228 | $ 363 |
| Expenditures | 82,408 | 84,809 | 81,355 | 3,454 |
| Revenues over (under) expenditures | $ 5,288 | $ 2,056 | $ 5,873 | $ 3,817 |
| Net other financing sources (uses) | (5,288) | (3,691) | (3,721) | (30) |
| Appropriated fund balance | - | 1,635 | - | (1,635) |
| Net change in fund balance | $ - | $ - | $ 2,152 | $ 2,152 |
| Summary of items contributing to net fund balance increase: | | | | |
| Other Taxes | | $ 15,669 | $ 16,487 | 818 |
| Housing Trust | | 798 | 80 | 718 |
| Contracted Services | | 4,439 | 3,668 | 771 |

***General Fund unassigned fund balance has improved and exceeds the 15% policy threshold.***

Unassigned fund balance improved by $906,000 year over year, up from $12,720,000 in FY 2011 to $13,626,000 at the end of FY 2012. For FY 2012, this amount represents 15.9% of expenditures and transfers to other funds. The improvement in unassigned fund balance can be attributed to several factors. One of those factors was an improvement in sales tax collections with a net positive impact of $363,000 in overall revenues. A variety of operating expenditures also came in under budget, including contracted services, utilities, and compensation.

Housing Trust Fund appropriations that were made but not loaned during the fiscal year ($718,000 positive variance) had a positive impact on the "assigned" portion of General Fund fund balance.

City Council has established a threshold of 15% of expenditures and routine transfers as the minimum amount necessary to support the General Fund's working capital levels ("unassigned" fund balance). The FY 2012 fund balance exceeds this threshold by $764,000. The table below reflects the components of fund balance that appear in the CAFR.

City Council previously directed staff to consider opportunities for one-time employee compensation if General Fund performance in FY 11-12 resulted in unassigned fund balance in excess of the 15% target. As a result, staff is recommending a $650 one-time bonus for permanent full- and part-time city employees. This payment does not add to the salary base for employees. The budget amendment for this appropriation is included with this staff report. Total cost for the bonus in the General Fund is $650,000, which leaves $114,000 available in unassigned fund balance for unplanned expenses or future reserve goals. The cost of the bonus in the City's enterprise funds will be funded out of the current year operating budget and does not require a budget amendment.

General Fund Balance

| | ,000 | |
|---|---|---|
| | 2012 | 2011 |
| Total fund balance | $ 21,788 | $ 19,636 |
| Less: | | |
| Unspendable fund balance | (448) | (466) |
| Restricted fund balance | (6,663) | (5,995) |
| Assigned fund balance | (1,051) | (455) |
| Fund balance available for appropriation | $ 13,626 | $ 12,720 |
| Total expenditures and routine transfers | $ 85,747 | $ 86,580 |
| Available fund balance as a percentage of expenditures and transfers to other funds | 15.9% | 14.7% |
| Available fund balance in excess (deficit) of 15% policy target | $ 764 | $ (267) |

***Financial performance as predicted or better than budget in nearly all proprietary funds.***

Despite a soft economy, financial results in most of the City's business-type activities experienced positive net income before one-time transfers out for FY 2012. The one exception to note is the Civic Center Fund, where revenues came in under budget due to the cancellation of a few major events and less event bookings due to renovations occurring in the arena. Staff is adjusting the current year Civic Center budget based on FY 2012 actuals to improve financial results. Within the Internal Service Fund, it is worth noting that the revenues exceeded expenditures by $1,067,394, indicating favorable risk management and health care claims performance during the year. She provided council with a table which summarized operating activity in these funds.

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***Fund balance levels in some proprietary funds may allow for enhanced capital investment in FY 2013-2014.***

City Council has adopted fund balance targets for all funds as part of its Financial Policy. At the end of FY 2012, three enterprise funds exceeded the established fund balance targets. It is staff's recommendation that City Council consider appropriating a portion of these funds for identified capital needs in the FY 2013-2014 budget cycle. In addition, staff is developing revised financial models, including five-year capital improvements programs, for the Water and Stormwater Funds. These models will reflect actual revenue and expenditure trends from previous years and be used to make recommendations on future utility rates and capital improvements. The Golf Fund's fund balance deficit is currently offset by the General Fund's restricted portion of its fund balance. With the approval of a long-term lease agreement for the Municipal Golf Course in the current year, staff expects to merge the activities of the Golf Fund with the General Fund in FY 12-13, and the Golf Fund will no longer be reported as a separate fund in the FY 13-14 audit. She provided council with a table that illustrated year over year changes in fund balance for the enterprise funds as well as a comparison to the adopted fund balance targets.

We are pleased to present the audit and look forward to continuing to improve the City's financial reporting and planning efforts. We would also like to express our appreciation to the numerous city employees who contributed to successful financial management in FY 2012, and to those employees, especially in the Finance Department, who worked on the audit process.

The City Council Finance Committee received monthly reports on the audit process since summer 2012.

This action supports the City of Asheville's strategic goal to operate the City to the highest levels of fiscal responsibility.

Pros:

- City received a "clean" opinion on financial statements and no findings on *internal control, stewardship, accountability and program compliance with federal and state awards.*
- Timeliness of audit completion achieved.
- General Fund financial performance was better than budget.
- General Fund undesignated fund balance exceeds City Council's 15% policy.
- Financial performance in nearly all funds as predicted or better than budget.
- Fund balance levels in some enterprise funds may allow for additional capital investment.

Con:

- None noted.

Staff recommends that City Council accept the Comprehensive Annual Financial Report and approve a budget amendment for a $650 one-time employee bonus requiring a total appropriation from General Fund unassigned fund balance in the amount of $650,000. The cost of the one-time bonus in the City's enterprise funds will be funded out of the current year operating budget."

It was the consensus of Council to accept the Comprehensive Annual Financial Report.

Mayor Bellamy said that members of Council have been previously provided with a copy of the ordinance and it would not be read.

Councilman Pelly moved for the adoption of Ordinance No. 4135. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 24**

**B. COMMUNITY ACTION COMMITTEE UPDATE**

Mayor Bellamy said that due to an illness of the presenter, this update will be rescheduled.

**C. ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL UPDATE**

Dr. Larry McCallum, Chairman of the Asheville-Buncombe Community Relations Council, and Ms. Sarah Nunez, Executive Director, briefed Council on their activities of the past year and goals for the upcoming year.

On behalf of City Council, Mayor Bellamy thanked Dr. McCallum and Ms. Nunez for their leadership and the entire Committee for their dedication.

**D. WATER RESOURCES UPDATE**

Project Manager Phil Kleisler updated City Council on the Water Resources general process update from October 9 - 23, 2012. He said the MSD Planning Committee will be hearing a presentation on November 14 of their draft merger study. The final report will be presented to the MSD Board on December 12. The Phase 2 study, which will look at the potential merger impact to the Town of Biltmore Forest, Town of Montreat and the Town of Weaverville, will be presented to their board in 2013. He said staff is reviewing the report and will provide Council with an analysis and background information relating to that report in the near future. He said that a manufacturing rate class is being developed along with alternative rate structures for consumption and capital fees that will be coming to Council in the near future. He then provided Council with the information sharing between the City and MSD.

It was the consensus of Council to hold a worksession to hear the staff analysis of the MSD/Arcadis merger study, the Raftelis report on governance models, and the City's financial analysis on December 11, 2012, prior to the formal meeting.

## IV. PUBLIC HEARINGS:

**A. PUBLIC HEARING TO CONSIDER A SIGNAGE PLAN FOR UNC-ASHEVILLE**

At the applicant's request, Councilman Hunt moved to continue this matter until January 22, 2013. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

## V. UNFINISHED BUSINESS:

**A. CONSIDERATION OF AN ORDINANCE AMENDING THE BILTMORE PARK TOWN CENTER SIGNAGE PLAN FOR RETAIL TENANT IDENTIFICATION SIGNAGE**

At the applicant's request, Councilman Bothwell moved to continue this matter until December 11, 2012. This motion was seconded by Councilman Davis and carried unanimously.

**B. ORDINANCE NO. 4136 - ORDINANCE AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES PERTAINING TO NOISE REGULATION**

Assistant City Attorney Kelly Whitlock said that that this is the consideration of amendments to Chapter 10 of the City's Code of Ordinance relating to the noise ordinance.

On August 20, 2011, during a town hall meeting held at UNC-Asheville, a citizen proposed revisions to the City's noise ordinance to strengthen the ability to measure volume of sound generated in residential neighborhoods. City Council expressed a willingness to examine the current noise ordinance and the issue was referred to the Public Safety Committee for review.

On March 26, 2012, after reviewing the current noise ordinance and resident feedback provided to City staff, the Public Safety Committee gave the following direction with respect to proposed ordinance revisions: 1) keep the reasonable person standard 2) explore the use of zones with respect to reasonable noise levels 3) define day and night 4) remove the notary requirement on complaints 5) dismiss citations/appeals if complainants/appellants don't attend the noise ordinance appeal hearing and 6) move forward with short-term actions such as education and outreach.

Based on the Public Safety Committee's recommendations above, City staff kept the reasonable person standard in the ordinance and made the following proposed changes:

1) Addition of yelling, shouting, parties and the sounding of a security alarm for more than 20 minutes after the owner/responsible party has been notified by law enforcement personnel to the list of enumerated activities that shall not be engaged in so as to cause a noise disturbance on neighboring premises.

2) Addition of the following factors to consider in determining whether a noise constitutes a noise disturbance: whether the noise occurred during daytime or nighttime hours; proximity to residential areas; whether the noise is recurrent, intermittent or constant; the volume and intensity; whether the noise has been enhanced in volume or range by any type of mechanical means; and the nature and zoning of the area.

3) Definition of residential areas to include any area in the City zoned the following: RS-2, RS-4, RS-8, RM-6, RM-8, and RM-16.

4) Definition of daytime hours as 7 a.m. to 11 p.m. and nighttime hours as 11:00 p.m. to 7:00 a.m.

5) Addition in the Procedures/Appeals section that the failure of the appellant or at least two complainants who filed the complaint to attend the noise ordinance appeal hearing results in dismissal of the appeal or complaint.

6) Revision of refuse collection hours exemption to clarify hours of operation. (Commercial refuse collection haulers are currently exempted from the noise ordinance if they are operating during daylight hours. Commercial refuse collection haulers are not prohibited *per se* from collecting during nighttime hours; however, if they produce a noise disturbance on occupied neighboring premises or public area, they are in violation of the ordinance (using the reasonable person standard). Current it is daylight hours, but staff proposes from 6 a.m. – 9 p.m.

On June 25, 2012, the Public Safety Committee reviewed the proposed revisions and directed staff to initiate a public campaign in order to gather input on the proposed revisions.

On August 6, 2012, City staff launched a 5–week campaign regarding the proposed revisions which consisted of the following: 1) creation of a Project Page on the City's website outlining the process and providing access to applicable documents; 2) creation of an online survey; 3) gathering of public input at a community meeting which was held on August 27, 2012; and 4) gathering of public comments by phone, email, mail and social media.

A total of 1045 individuals participated in the survey. Responses suggest most people are:

- Moderately familiar with the City of Asheville noise ordinance.
- Believe it is at least moderately important to revise the ordinance.
- At least moderately in favor of defining day as 7 a.m. to 11 p.m. with 309 respondents offering alternative hours for the definition.
- Strongly favor including "yelling and shouting" in the list of activities that could cause a noise disturbance.
- At least moderately favor including "parties" in the list of activities that could cause a noise disturbance.
- Strongly favor including "the sounding of any security alarm for more than 20 minutes following notification by law enforcement personnel" in the list of activities that could cause a noise disturbance.
- At least moderately willing to work toward a solution with a trained mediator before filing a complaint.
- Comfortable with the current fines for violations.

Additional comments were also gathered on the survey, at the community meeting, through phone calls, email, mail, and social media which consisted of the following:

| Subject | Mentions | Staff Comments |
|---|---|---|
| Muffler-related noise | 96 | Currently addressed in Sec. 10-84(6) Education Opportunity |
| Dogs | 50 | Currently addressed in Sec. 10-84(3) Education Opportunity |
| Bullhorns/Megaphones | 30 | Currently addressed in Sec. 10-84 (15) Over half of the mentions related to Bele Chere. There is currently an exemption surrounding noise emanating from city-sponsored events. Sec. 10-85(3) Education opportunity |
| Loud music in cars | 17 | Currently addressed in Sec. 10-84(1) Education opportunity |
| Decibels | 16 | 6 people felt they should be used for specific disturbances such as mufflers. 4 specifically mentioned they do not support the use of decibels. |
| Outside speakers | 7 | Currently covered in UDO. Planning Department anticipate presenting revisions to the Planning & Zoning Commission in December and City Council in January. |

These findings were presented to the Public Safety Committee on September 24, 2012. The Public Safety Committee voted to send the proposed revisions to City Council.

Based on a recommendation from the Public Safety Committee, the Asheville Police Department contacted seven NC law enforcement agencies in reference to the standard method of enforcement of the noise ordinance in their jurisdictions. Those cities consisted of the following: Charlotte, Greenville, Fayetteville, Hickory, High Point, Raleigh, and Winston-Salem.

Each of the seven municipalities has a noise ordinance that contains the "reasonable person" standard as a standard of enforcement. Several factors (time of day; proximity to residential structures; whether the noise is recurrent, intermittent, or constant; volume and

intensity; or amplified by electronic or mechanical means, etc) are taken into consideration as to whether the noise violates the "reasonable person" standard. Five of the seven ordinances also include the use of a decibel meter as a means to measure the sound level and enforce the noise ordinances.

The enforcement standard for 80% of the agencies surveyed that had decibel meters available for use was to utilize the "reasonable person" standard first when responding to a noise complaint. The sound level meters are used in situations where the person or business would not voluntarily comply with the ordinance or there is a complaint involving a permitted outdoor event. Only one of the five agencies (Charlotte/Mecklenburg) that use decibel sound level meters issued a directive that a sound level meter shall be utilized when a citation is issued for a noise violation (approx. 38 citations issued in 2011).

In the City of Asheville, a search of APD's CAD calls yielded the following information regarding noise complaints:

| Year | 2011 | 2012 (as of Nov. 1) |
|---|---|---|
| | | |
| Calls for Service | 2,489 | 2,359 |
| Verbal warnings | 526 | 517 |
| Citations | 40 | 34 |
| Arrests (on other charges) | 22 | 11 |
| Compliance/referral | 455 | 422 |
| Appeals to Noise Ordinance Appeal Board – police issued citations | 6- Violation upheld: 6 | 7 – Violation upheld: 5<br>Violation overturned: 2 |
| Appeals to Noise Ordinance Appeals Board - complaints | 5- Violation found: 2<br>Violation found but penalty delayed for parties to resolve issue: 3 | 1- Hearing continued for parties to resolve issue |

Pros:

- Takes into consideration the type of zone and time of day in determining whether a noise constitutes a "noise disturbance"
- Increases the number of factors officers can utilize when determining whether a noise constitutes a "noise disturbance"
- Provides community clearer understanding of what constitutes a noise disturbance
- Instrument (i.e. decibel meter) is not required to enforce ordinance
- Defined hours of approved operation for commercial refuse collection vehicles removes ambiguity of when daytime and nighttime begins.

Con:

- Determination of whether a noise constitutes a "noise disturbance " relies on officer discretion

This action complies with City Council's Strategic Operating Plan in the Job Growth and Community Development goal - Goal I: Collaborative and effective working partnerships between the City of Asheville, the business community, and other key organizations to effectively manage the City's regulatory environment while accomplishing economic development goals.

If Council keeps the "reasonable person standard", negligible fiscal impact is expected.

If Council adopts the "decibel level standard", an A-weighted sound level meter certified to meet ANSI standards for each district would be required. The price per meter ranges from $2,000 to $5,000. Cost of training officers would also be required (approx 1-8 hours). The current

average salary for an APD officer is $20.6367 per hour and the average salary for an APD sergeant is $25.6461 per hour. Total capital outlay cost would not exceed $15,000. This cost would be absorbed within the Asheville Police Department budget.

If Council approves the proposed changes, adoption of the ordinance is recommended.

Mr. John Ander Green, Asheville resident, felt that the reasonable person standard is too subjective for the police officers and rather than talk about creating exceptions you should create sub-statuses (what kind of noise is it and who is the dispute between). By putting things in that type of classification on the scene, then on appeal the question is easier to sort through.

Mr. Larry Holt, representing DARN, asked Council to (1) include the Central Business District in the definition of residential areas, and (2) refuse collection hours be from 7:00 a.m. – 11:00 p.m.

Ms. Patricia Dockery, west Asheville resident, urged council to send this noise ordinance back to the Public Safety Committee. She supported a decibel level standard and argued that a sound level meter would cost from $29-150 for a hand-held type for police cars. She said that she was taught how to use one in a very short period of time. She said the survey did not include a question about decibel levels.

Mr. David Rogers, north Asheville resident, supported adoption of the noise ordinance but suggested the daylight hours be from 7:00 a.m. to 10:00 p.m.

Ms. Grace Curry, resident on Edgemont Road, asked Council to include lawn equipment to the definitions in the noise ordinance.

Councilman Bothwell, Chair of the Public Safety Committee, said that using the decibel level standard is also subjective because they are usually taken at the property line and it is difficult for the officer to make that determination. He did support lawn equipment being included in the ordinance. Regarding including the Central Business District, it is a commercial district. He thought that including the Central Business District in the ordinance may be a separate discussion.

In response to Vice-Mayor Manheimer, Ms. Whitlock said that cities do not base their daylight/nighttime house by season, but some deviate them on weekdays vs. weekends. There was no consideration give to that.

Councilman Davis noted that even though these are significant changes, the ordinance can be revisited.

Councilman Hunt felt it was important to let the public know that the noise ordinance does not have to come directly from inside the residential district but it can come from a non-residential area as well.

In response to Councilman Pelly regarding the refuse collection pick-up time, Councilman Bothwell said that many trucks leave as early at 4 a.m. and we are restricting them now to 6 a.m. In addition, they need to access the dumpsters prior to morning traffic and parking.

At Mayor Bellamy's suggestion, it was the consensus of Council to report back to Council in one year on the impact of the ordinance changes.

Vice-Mayor Manheimer liked the idea of revisiting the ordinance in one year, especially focusing on the definition of daytime/nighttime hours, due to our topography.

When Mayor Bellamy asked for public comments, none were received.

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Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Bothwell moved for the adoption of Ordinance No. 4136. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 26**

**VI. NEW BUSINESS:**

**A. MOTION DIRECTING THE CITY MANAGER OR HIS DESIGNEE TO EXTEND EXISTING AGREEMENTS FOR SPONSORSHIP OF FIVE ANCHOR EVENTS IN FY 13-14 INCLUDING ASHEVILLE DRUM CIRCLE, ASHEVILLE HOLIDAY PARADE, DOWNTOWN AFTER 5, GOOMBAY, AND SHINDIG ON THE GREEN**

City Manager Jackson said that this is the consideration of a motion to direct the City Manager or his designee to extend agreements for the sponsorship of five anchor events in FY 13-14.

The City of Asheville charges everyone a fee to permit and have priority use of parks, permitted amenities, or public facilities. These fees cover extra operational expenses associated with events and guarantee space for the permittee. At the same time, some events produced by non-profit agencies or other sister organizations - such as concerts, art shows, cultural celebrations, theater performances, health fairs, sports events, and others – can also directly further the City's core programs. Consequently, reducing or waiving permit fees and considering in-kind support from city operational departments (i.e., Public Works, Asheville Police Department, Asheville Fire Department) can be an opportunity to leverage the City's ability to provide these programs while reaching a wider and more diverse audience, thus serving a public purpose. As a result, in recognition of the value these events bring the city of Asheville and the broader community, the city has historically offered support to events that meet certain criteria.

In March 2010, City Council authorized staff to enter into three-year agreements with various organizations to sponsor five anchor events (Asheville Drum Circle, Asheville Holiday Parade, Downtown After 5, Goombay, and Shindig on the Green) in the form of full permit fee waivers and in-kind labor support (police, sanitation, etc.) valued at $102,211. A summary of that support is provided below.

| | Permit Fee Waivers | Labor Support | Total Support |
|---|---|---|---|
| Asheville Drum Circle | $3,875 | $0 | $3,875 |
| Asheville Holiday Parade | $1,562 | $39,462 | $41,024 |
| Downtown After 5 | $2,143 | $14,780 | $16,923 |
| Goombay Festival | $2,942 | $26,869 | $29,811 |
| Shindig on the Green | $7,414 | $3,164 | $10,578 |

The organizations may use less of the allocated amount but City Council directed staff to cap city support at that dollar amount for the life of the agreements.

In addition, City Council approved a non-profit level for permit fees, which amounted to a 75% reduction in event permit fees, for events that were produced by a registered 501c non-profit verified through documentation; open to the general public; and remained responsible for general liability insurance and other related event costs including police coverage, barricades, parking meter closures, etc.

Staff executed those agreements with FY 2012 as the concluding year. Non-profit fee reductions have been implemented with the Fees and Charges ordinance each year during the budget process. In the last year alone, 163 special events have taken advantage of the non-profit fee discount.

Pros:

- Strategic partnerships allow the city to leverage programming and events to reach a wider and more diverse audience.
- Continuation for one year allows staff the opportunity to evaluate the City's overall event programming strategy in the context of other strategic goals.

Cons:

- Anchor events incur costs to the City for personnel, typically in the form of overtime.
- A 75% reduction in permit fees for non-profit organizations results in lost revenue for the city; however, the city does not budget for this revenue since it tends to fluctuate from year to year.

Partnership agreements and fee discounts result in lost revenue, and labor support results in increased personnel expenses (summarized in table above). In-kind labor costs for anchor events have been included in the City's budget during the agreement period. If these agreements are extended for FY13-14, associated expense and revenue impacts will be included in the City's budget.

City staff is in the process of evaluating its overall event programming strategy in the context of economic and community development, fiscal responsibility and cultural arts goals. This review will include events produced internally by the City (Bele Chere, Fourth of July Celebration) as well as sponsored events and programming needs in key areas like Pack Square Park. This process is expected to take 9-12 months. Until that review and associated recommendations are complete, staff recommends extending the existing agreements with the current anchor event organizations using the same terms for an additional year, FY13-14. City staff will bring forward the non-profit fee discount with the FY13-14 fees and charges recommendations.

Therefore, staff recommends that City Council pass a motion to direct the City Manager or his designee to extend existing agreements for the sponsorship of five anchor events in FY 13-14 to include Asheville Drum Circle, Asheville Holiday Parade, Downtown After 5, Goombay, and Shindig on the Green.

When Mayor Bellamy asked for public comments, none were received.

Vice-Mayor Manheimer moved to direct the City Manager or his designee to extend agreements for the sponsorship of five anchor events in FY 13-14. This motion was seconded by Councilman Bothwell and carried unanimously.

**B. RESOLUTION NO. 12-239 - RESOLUTION REQUESTING HUD WAIVER OF CONFLICT REGARDING EAGLE-MARKET PLACE PROPERTY ACQUISITION**

City Attorney Bob Oast said that this is the consideration of a resolution requesting the U.S. Department of Housing and Urban Development Department to grant an exception to the Conflict of Interest regulations (24 CFR 570.611 and 24 CFR Part 92.356) governing the Federal Community Development Block Grant (CDBG) and HOME Investment Partnerships Programs (HOME), in regard to the "Eagle Market Place" Development project.

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Upon written request, exceptions to the HOME and CDBG Conflict of Interest provisions applying to employees, officials, consultants, agents, etc. of local governments receiving CDBG and HOME funds may be granted on a case-by-case basis.

HUD may grant exceptions only after the local government has:

- Disclosed the full nature of the conflict and submitted proof that the disclosure has been made public, and
- Provided a legal opinion stating that there would be no violation of state or local law if it granted the exception.

The area at the southwest corner of Eagle and Market Streets in the South Pack Square area has been proposed for redevelopment in connection with a project known as Eagle Market Place. Eagle Market Place is a mixed use development that is planned as 62 apartments, approximately 7,000 SF of commercial space, and approximately 6,000 SF of community space, that will retain and incorporate historic structures and long-established pedestrian streetscape with contemporary design and new residential and commercial uses. It will consist of new construction and renovation/restoration in the historic Eagle Market Street area, which will include the Del Cardo, the Collette and the Ritz buildings. This area was the hub of African American residences and businesses up through the 1940s-50s.

The property at 42-44 South Market Street, which includes the Ritz building (herein "Ritz property"), was acquired in a foreclosure proceeding in 2000 by Gene Ellison and Howard McGlohon as joint tenants. Martha McGlohon, an Assistant Attorney with the City of Asheville, was married to Howard McGlohon. She was not one of the grantees in the deed, but acquired her interest when Howard McGlohon passed away unexpectedly in 2010. She will receive a portion of the proceeds from the sale of the property.

The exception request will be based on the following factors:

- Ms. McGlohon received her interest in the Ritz property by operation of law, and did not actively participate in the acquisition or previous uses of the property;
- Ms. McGlohon has not participated in the marketing of the Ritz property;
- Ms. McGlohon has withdrawn from her functions, responsibilities and decision making participation as a public official with respect to the proposed project; and
- Undue hardship will result to the community when weighted against the public interest served by avoiding the prohibited conflict

The City has committed $300,000 of HOME Investment partnership funds and anticipates investing Community Development Block Grant Section 108 funds to the project. These funds cannot be invested in this project without HUD granting an exception to the Conflict of Interest regulations.

City staff recommends City Council adopt the resolution authorizing the City Manager and City Attorney to submit a request to the U.S. Department of Housing and Urban Development to grant an exception based on the identified factors.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 12-239. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 123**

**C. RESOLUTION NO. 12-240 - RESOLUTION APPOINTING MEMBERS TO THE ALCOHOLIC BEVERAGE CONTROL BOARD**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Alcoholic Beverage Control Board.

The terms of DeRothea Williams and Ken Kaplan expire on November 13, 2012.

The following individuals have applied for the vacancies: Mark W. Cates, Guadalupe Chavarria II, Randall C. Hall, Jody Kuhne, Fred Cooke, Charles Larrick, Melissa L. English, Sarita Mangum, Edward Hay, David Hall, Robin Cape and Max Haner.

Boards & Commissions Committee recommended the appointment of Edward Hay and Robin Cape.

Councilman Bothwell moved to appoint Edward Hay and Robin Cape as members of the Alcoholic Beverage Control Board to each serve a three-year term respectively, terms to expire November 13, 2015, or until their successors have been appointed. This motion was seconded by Councilman Davis and carried unanimously.

Mayor Bellamy asked that for the next vacancy we try look for racial diversity on the ABC Board.

**RESOLUTION BOOK NO. 35 – PAGE 124**

**D. RESOLUTION NO. 12-241 - RESOLUTION APPOINTING A MEMBER TO THE HOMELESS INITIATIVE ADVISORY COMMITTEE**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Homeless Initiative Advisory Committee.

Chris Sullivan has resigned, thus leaving an unexpired term until November 1, 2014.

The following individuals have applied for a vacancy: Charles Rosenblum, John Spears, Charles Barber, Shana Roberts, Cynthia J. Sellers and David Hall.

It was the consensus of the Boards & Commissions Committee, at the suggestion of the Homeless Initiative Advisory Committee, to appoint Mr. Charles Rosenblum.

Councilman Bothwell moved to appoint Charles Rosenblum to serve the unexpired term of Mr. Sullivan, term to expire November 1, 2014, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 125**

**E. RESOLUTION NO. 12-242 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ART & CULTURAL COMMISSION**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Public Art & Cultural Commission.

Mark Koven has resigned, thus leaving an unexpired term until June 30, 2014.

The following individuals have applied for a vacancy: Davyne Dial, John Spears, Grant Millin, Itiyopia Ewart, Laura Corte, Andrew Montrie, Angela Rutledge, Bruce Waller, Melinda

Tennison, Guillermo Carballo Rodriguez, Charley Akers, Amy Huntsman Wayne C. Wheeler, Jared Gold, Bryan Andrews, Victor Palomino and Kara Warren.

It was the consensus of the Boards & Commissions Committee, at the suggestion of the Public Art & Cultural Commission, to appoint Guillermo Carballo Rodriguez

Councilman Bothwell moved to appoint Guillermo Carballo Rodriguez to serve the unexpired term of Mr. Koven, term to expire June 30, 2014, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 126**

**F. RESOLUTION NO. 12-243 - RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Recreation Board.

Lonnie Gilliam has resigned, thus leaving an unexpired term until June 30, 2014.

The following individuals have applied for a vacancy: Robert Pierce, Mike Lovoy, Guillermo Carballo Rodriguez and Jordan Veale.

It was the consensus of the Boards & Commissions Committee, at the suggestion of the Recreation Board, to appoint Jordan Veale.

Councilman Davis moved to appoint Jordan Veale to serve the unexpired term of Mr. Gilliam, term to expire June 30, 2014, or until his successor has been appointed. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 127**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. John Spitzberg, President of the Asheville Homeless Network, explained that Code Purple is the Asheville-Buncombe Homeless Coalition's procedure for providing emergency overflow shelter to people experiencing homelessness in the event of severe weather conditions. He asked that Council investigate why our Homeless Initiative Coordinator said that Code Purple is left to the individual shelters to decide how and when to implement the procedure. After a brief discussion, at the request of Council, City Manager Jackson said that he would be happy to report to the Public Safety Committee on November 26 on the Code Purple policy and the role/responsibilities of the City, individual shelters, and others in the setting of and application of the standards for activation.

Ms. Shirley Dozier, Montford Avenue resident, (1) raised questions regarding William Randolph School (which would have to be answered by the School Board); and (2) requested a response from City Attorney Oast regarding the sale of Tract 3 of the Head of Montford. City Attorney Oast apologized for not responding quicker to Ms. Dozier, but he said would have a response to her soon.

Mayor Bellamy thanked all the veterans who have served our country.

**Lawsuit**

The City was served with a Complaint on October 29, 2012, which is generally described as follows: Pack Place Performing Arts, d/b/a Diana Wortham Theatre; Pack Place Education,

Arts & Science Center; and the City of Asheville. The nature of the complaint is for compensatory damages as a result of defendants' negligence. This matter will be handled by an attorney outside of the City Attorney's Office.

**Closed Session**

At 6:53 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: Robert D. Gaddy, Jr., v. W.M. Yelton, Doug Sheehan, Nicholas Ryan Mitchell, Ervin Hunter, and Jimmy Stover. The statutory authorization is contained in G.S. 143-318.11(a)(3); (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4); and (3) To prevent the disclosure of information that is privileged or confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The laws that make the information privileged or confidential are N.C. Gen. Stat. sec. 143-318.10 (e). The statutory authorization is contained in N.C. Gen. Stat. sec. 143-318.11 (a) (1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 7:36 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilman Hunt and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:36 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

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Tuesday – November 27, 2012 – 3:30 p.m.
First Floor North Conference Room – City Hall

Worksession

Present: Vice-Mayor Esther E. Manheimer, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Terry M. Bellamy (illness)

**Legislative Issues**

City Attorney Oast provided Council information from last year as a guide. We still remain interested in the Airport and water issues. The Legislature convenes on January 30 for business purposes. There are two issues on the Chamber's state legislative agenda that the City will be interested in - Job Creation, I-26 and wireless infrastructure. Mayor Bellamy felt it was important to work on our relationships with our legislators - not only by City Council, but also our legislative representation.

Throughout discussion, the following items were brought up for legislative discussion (with the Airport and water issues still of major importance): (1) support initiatives in the wireless technology; (2) enabling legislation (a) to change the distribution of the occupancy tax rate; and (b) the City and the TDA determine that rate; (3) completion of the I-26 Connector Project; (4) ask state to fund the bus routes to Weaverville and Black Mountain; (5) partnership to have bus route that would serve MAHEC and Mission Hospitals; (6) do not burden cities with funding responsibilities for bridges and County roads; (7) increase bus service to Airport; (8) River Arts District; (9) PACE program to help homeowners make energy efficiency in their homes; (10) concern of forced consolidation of school districts; (11) assistance in mental health area that will help alleviate pressure on our first responders; and (12) support tax incentives tools for job creation.

Councilman Bothwell said that the Retreat Committee will be meeting again to firm up a December 7 morning meeting (regarding legislative relationships) and the other morning meeting will be held in March (regarding finances). As soon as those dates are firmed up, Council will be notified. Our legislative representation will be invited.

Council asked City Attorney Oat to update Council on Senate Bill 305 that would have amended the charter of the Town of Carrboro to allow them to adopt ordinances prohibiting housing discrimination on the basis of sexual orientation, gender identification and gender expression.

At the suggestion of Mr. Dennis Wicker, Councilman Pelly moved to appoint Vice-Mayor Manheimer as the City Council liaison to our legislative representatives. This motion was seconded by Councilman Hunt and carried unanimously.

At 4:21 p.m., Vice-Mayor Manheimer adjourned the worksession.

Tuesday – November 27, 2012 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor Esther E. Manheimer, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Terry M. Bellamy (illness)

**PLEDGE OF ALLEGIANCE**

Vice-Mayor Manheimer led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Davis gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING DECEMBER 1, 2012, AS "WORLD AIDS DAY"**

Councilman Smith read the proclamation proclaiming December 1, 2012, as "World AIDS Day" in the City of Asheville. He presented the proclamation to Ms. Pam Siekman, WNCAP Board President and WNCAP World AIDS Day Chairperson, who briefed City Council on some activities taking place during the day.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 13, 2012**

**B. RESOLUTION NO. 12-244 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS FROM THE U.S. DEPT. OF JUSTICE FOR THE 2012 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT**

**ORDINANCE NO. 4137 - BUDGET AMENDMENT FOR THE 2012 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT**

Summary: The consideration of (1) a resolution authorizing the City to accept funds awarded through the 2012 Byrne Justice Assistance Grant – Local Solicitation; and (2) the accompanying budget amendment, in the amount of $56,927.

The Asheville Police Department received Council authorization to apply for the Byrne JAG – Local Solicitation on May 22, 2012 via resolution 12-117. This is a predetermined amount of funds based on the Part 1 Uniform Crime Reporting Crimes. The Asheville Police Department and Buncombe County Sheriff's Department will be allocated $56,927 based on the award matrix, with Asheville receiving $41,582 and Buncombe County receiving $15,345. The distribution of funds has been approved through a signed MOU.

APD plans to purchase in-car video systems to place in patrol cars. These recordings would generally serve as evidence to be utilized in court for the prosecution of criminal cases.

However, these recordings could also be used to aid in resolving allegations of wrongdoing by officers. This would allow for an even greater level of protection of officers and citizens. The digital cameras provide high quality and high resolution video/audio recording of events in and around the patrol car. Recordings such as this help protect the interests of citizens as well as the interests of police officers. Recordings captured with these cameras could potentially aid in mitigating potential civil liability for the City of Asheville by illustrating in detail the actual events that transpired. The secure evidentiary storage and wireless upload capabilities of the system create a user friendly system that is extremely secure and versatile.

The Buncombe County Sheriff's Department plans to purchase a throwbot robotic mobile surveillance system, digital imagery equipment, and TASER X2s. The size and methods of deployment are more versatile than traditional robots and will enhance officer safety by transmitting images back to a display for viewing. This digital imagery equipment enhances the ability to capture non-testimonial identification imagery and will provide for positive identifications quicker. TASER X2s will allow deputies to deal with one or multiple persons at a time with less lethal force – thus enhancing officer and community safety.

There will be an expense of $41,582 by the APD for the in-car video system. The Buncombe County Sheriff's Department will expend $15,345 for the purchase of a throwbot portable surveillance robot, digital imagery equipment and TASERs. This accounts for the total allocation of $56,927 for this Grant.

This is a 100% non-matching grant that will enable the APD to greatly enhance documentation of patrol related activities such as vehicle stops, pursuits, etc. The video evidence will prove to be very valuable in court for both civil and criminal offenses. Additionally, such evidence will be valuable to for internal investigations into officer actions and encounters. This will enhance accountability for officer actions and increase officer and public safety.

This action complies with City Council's Strategic Operating Plan in the Focus Area - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities.

Pros:

- Increasing In-Car video will allow for better documentation of police related incidents.
- Increases officer and citizen accountability through recorded interactions.

Con:

- None.

There is no fiscal impact at this time for City Council to approve the resolution accepting this grant award. There will be maintenance and replacement costs for the equipment that will need to be included in future fiscal year budgets.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to accept grant funds through US Office of Justice Programs; and (2) the associated budget amendment, in the amount of $56,927.

**RESOLUTION BOOK NO. 35 – PAGE 128**
**ORDINANCE BOOK NO. 28 - PAGE 28**

**C. RESOLUTION NO. 12-245 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS FROM THE U.S. DEPT. OF JUSTICE FOR THE 2012 BALLISTIC VEST PARTNERSHIP GRANT**

**ORDINANCE NO. 4138 - BUDGET AMENDMENT FOR THE 2012 BALLISTIC VEST PARTNERSHIP GRANT**

Summary: The consideration of (1) a resolution authorizing the City Manager to accept funds through the Bulletproof Vest Partnership Program in the amount of $7,735 to cover the 50% matching cost of bulletproof vests for officers; and (2) the accompanying budget amendment, in the amount of $7,735.

The City of Asheville Police Department currently participates in the US Department of Justice BVP program. The funds allocated through this program are designed to offset departmental cost associated with purchasing bulletproof vests. The City of Asheville has been awarded $7,735. This request will enable the purchase (50% funding) of 26 bulletproof vests over the next 2 years.

This action complies with City Council's Strategic Operating Plan in the Focus Areas - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities and Fiscal Responsibility – The City of Asheville will support a stronger, more prosperous community by making smart investments that accomplish lasting, tangible returns.

Pros:

- Reduction in cost to the City of Asheville for the purchase of bulletproof vests
- Increase in officer safety by providing crucial safety equipment

Con:

- None

There is a 50% match required by the City of Asheville in the amount of $7,735 to accept the awarded funds of $7,735. Matching funds $7,735 will come from existing FY13 funds allocated in Patrol – Supplies – Safety Equipment. It should be noted that the overall fiscal impact to the City of Asheville is reduced by this amount due to the fact that the APD would have to purchase these vests at full replacement costs if we do not accept this award.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to accept funds through US Department of Justice in the amount of $7,735; (2) the accompanying budget amendment.

**RESOLUTION BOOK NO. 35 – PAGE 129**
**ORDINANCE BOOK NO. 28 – PAGE 30**

**D. RESOLUTION NO. 12-246 - RESOLUTION SUPPORTING THE VOLUNTEER INCOME TAX ASSISTANCE PROGRAM**

Summary: (1) The City Council of the City of Asheville hereby expresses their support for the establishment of a community-based coalition for the Volunteer Income Tax Assistance [VITA] program; (2) That the City of Asheville provide adequate space to conduct VITA activities during the normal income tax filing season of January through April; (3) That the City of Asheville allow city and county employees willing to volunteer for VITA activities flexibility to do so, as long as the volunteer activities do not disrupt normal working activities; and (4) That the City of Asheville provide nominal funding to provide for VITA activity supplies and travel for volunteers to and from city and county VITA sites.

**RESOLUTION BOOK NO. 25 - PAGE 130**

**E. ORDINANCE NO. 4139 - BUDGET AMENDMENT FOR FISCAL YEAR 2012-13 SENIOR CENTER GENERAL PURPOSE FUNDING FOR THE SENIOR OPPORTUNITY CENTER AND HARVEST HOUSE**

Summary: The consideration of budget amendments in the amount of $3,917 for Senior Opportunity Center and $3,917 for Harvest House for an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding.

Funds will be used at the Senior Opportunity Center to 1) replace cabinets and countertops in restrooms, 2) paint center ceiling, and 3) purchase program and facility equipment. The allocation requires a 25% local match which will be provided via in-kind services of staff time to manage the project.

Funds will be used at Harvest House to 1) replace lighting in the craft rooms, 2) upgrade exit signage, and 3) purchase program and facility equipment. This allocation also requires a 25% local match which will be provided via in-kind services of staff time to manage the project.

This action complies with the City Council Strategic Goal of fiscal responsibility in that it provides an alternative for enhancing the city's infrastructure maintenance. This action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it will increase the level of service for indoor facilities to bring older facilities up to date before building new facilities, increase department funding with alternative funding via grants, and enhance the department's means to respond to identified programming priorities.

Pros:

- Facility improvements will address existing maintenance projects and improve accessibility.
- Equipment purchases will enhance the customer experience and expand programming opportunities provided

Con:

- None

The allocation will increase the City's General Fund budget by $7,834 in special project accounts designated for the Senior Opportunity Center and Harvest House. The 25% local match will be provided through in-kind services of staff time to manage the projects.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to establish a budget in the amount of 1) $3,917 for Senior Opportunity Center, and 2) $3,917 for Harvest House for facility improvements and equipment.

**ORDINANCE BOOK NO. 28 - PAGE 32**

**F. RESOLUTION NO. 12 - 247 - RESOLUTION AUTHORIZING THE CITY MANAGER SIGN AMENDMENT NO. 3 FOR THE KIMLEY-HORN CONTRACT FOR 51 BILTMORE AVENUE**

Summary: The consideration of a resolution authorizing the City Manager to execute an amended contract with Kimley-Horn and Associates, Inc. in the amount of $71,000 to cover additional construction inspection/management services for the parking garage at 51 Biltmore Avenue.

The City of Asheville contracted with Kimley-Horn and Associates, Inc., in the amount of $42,000 to evaluate the feasibility of constructing a parking garage at 51 Biltmore Avenue in July 2008. In October 2008, the City amended the contract to include design review, value engineering and construction inspection/management of the project. The approved amendment was in the amount of $215,000 for a total contract amount of $257,000. In November 2011, City Council approved a second amendment to the contract in the about of $175,000 because of the lag in the design period and the start of construction. During this period of time, Kimley Horn

provided services necessary to secure the financing of the project. Additionally, we requested that Kimley-Horn provide weekly site inspections as opposed to monthly inspections as stated in the original contract. We also asked them to provide additional oversight as needed to sign off on each pay application request. The total amount of the contract including this increase would be $503,000.

Staff is requesting a third amendment to the Kimley-Horn contract for the following reasons:

- The project took an additional three months to complete during which time Kimley-Horn provided weekly inspections to finish the project. Delays were attributed to complications in completing the punch list items that needed to be completed prior to obtaining the temporary and final certificate of occupancy. The City will receive some discounted change order as a result of this delay. We do not know the amount of this change but do not expect it to cover the full cost of this amendment. However, the overall project is still within budget including this amendment.
- The only major unresolved issue on the garage is the concrete finish. Kimley-Horn has worked more hours than anticipated to resolve this issue.

This project complies with the City's Parking Action Plan. Additionally, the action complies with Job Growth and Community Development by supporting a dynamic and robust local economy with balanced and sustainable growth.

Pros:

- Quality control over the project during this period was critical to making sure all the punch list items are complete.
- Reduces liability in releasing the retainage on the project.
- Documented maintenance plan provides for the extended life of the parking facility.

Con:

- Additional cost of $71,000.

There is sufficient budget remaining in the Biltmore Avenue Garage capital project for this contract amendment.

Staff recommends that City Council authorize the City Manager to execute an amended contract with Kimley-Horn and Associates, Inc. in the amount of $71,000 to provide additional construction inspection/management services for the parking garage at 51 Biltmore Avenue.

In response to Councilman Bothwell, Public Works Director Cathy Ball said that this is still within the budgeted amount for this project.

**RESOLUTION BOOK NO. 35 – PAGE 132**

**G. RESOLUTION NO. 12-248 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH B ALLEN CONSTRUCTION INC. FOR CONSTRUCTION IMPROVEMENTS TO THE RED WOLF EXHIBIT, SPIDER KINGDOM PLAYGROUND AND TRAIL EXTENSION AT THE WNC NATURE CENTER**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with B Allen Construction, Inc. to construct improvements to the red wolf exhibit, Spider Kingdom Playground and trail extension at the WNC Nature Center for an amount not to exceed $299,000.

In February 2009, City Council approved the Parks, Recreation Cultural Arts and Greenways Master Plan which recommends the development of a master site plan for future development of the WNC Nature Center. In 2011, the city completed the 2020 Vision Master Site Plan that directs future improvements at the WNC Nature Center.

The 2020 Vision Master Site Plan prioritizes the importance of enhancing the red wolf viewing experience, establishing a themed playground and extending a trail to make the red wolf exhibit more accessible as well enable future exhibit areas. The architectural and engineering construction documents for this area were completed earlier in 2012.

Staff followed the municipal process to conduct the request for proposals to seek qualified, professional firms to perform the construction. Staff received three proposals, and interviewed all three finalists. After thorough review and evaluation, staff recommended B Allen Construction, Inc., located at 340 Wiggins Road, Candler, North Carolina, as the lowest, responsive and responsible bidder to perform the construction work for the project.

This action complies with the City Council Strategic Operating Plan in that it contributes to the Fiscal Responsibility Goal to explore alternatives for enhancing the city's long-term financial commitment t master plan implementation, infrastructure maintenance, capital improvements and public facilities. This action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it ensures a continued high level of service in parks, and improves a special facility.

Pros:

- The project adheres to the Nature Center 2020 Vision Master Site Plan
- The project will enhance the visitor experience, education and observation of the red wolves
- The improvements will create a new interpretative, play area for children
- Handicap accessible routes will be enhanced and increased for the public
- The improvement will set the stage for future, themed exhibit areas and site improvements
- The project is fully-funded with non-General Fund sources

Con:

- Once complete, the project will require additional maintenance resources

The project is fully funded with non-General Fund sources. The $299,000 to support the construction contract for improvements to the red wolf exhibit, Spider Kingdom Playground and trail extension is funded by a $104,450 grant from the U.S. Department of Interior, a $168,856 donation from the Friends of the Nature Center, and a $25,694 grant from the North Carolina Department Commerce.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with B Allen Construction, Inc. to construct the red wolf exhibit improvements, Spider Kingdom Playground and trail extension at the WNC Nature Center for an amount not to exceed $299,000.

**RESOLUTION BOOK NO. 35 – PAGE 133**

**H. RESOLUTION NO. 12-249 - RESOLUTION AUTHORIZING AN EXEMPTION TO BID THE PURCHASE OF SUPPLIES AND MATERIALS FOR THE AUTOMATED METER READING (AMR) PROJECT AND APPROVING THE PURCHASE OF THE AMR SPARE PARTS FROM HERSEY METERS COMPANY BASED ON STANDARDIZATION NEEDS**

Summary: The consideration of a resolution (1) authorizing an exemption to bid the purchase of supplies and materials for the Automated Meter Reading (AMR) Project; and (2) approving the purchase of the AMR spare parts from Hersey Meters Company based on standardization needs.

Currently, Water Resources is under contract with Hersey Meters for the Automated Meter Reading (AMR) Project. As part of the project, spare parts are sometimes needed to make repairs to the AMR devices. The spare parts can only be purchased from Hersey Meters since they have the trademark on the AMR device and its parts.

Water Resources is recommending that the purchase of supplies and materials needed for the AMR Project be through Hersey Meters since standardization or compatibility is the overriding consideration per G.S. 143-129 (e) (6) (iii).

This project is part of City Council's strategic plan to maintain city infrastructure and to operate the City of Asheville to the highest levels of fiscal responsibility.

Pros:
- Approval will allow the City to purchase repair and replacement parts needed for the AMR Project.
- Maintaining this equipment in operational condition will prolong the life of the equipment and enhance the value of the City's initial investment.

Con:
- None.

The purchase of supplies and materials relating to the AMR Project is currently built into the CIP budget. The amount needed for spare parts is currently $35,900.20. Once the AMR project is complete, future purchases will be funded from the Water Operating budget.

City staff recommends City Council approval of the resolution: (1) authorizing an exemption to bid the purchase of supplies and materials for the Automated Meter Reading (AMR) Project; and (2) approving the purchase of the AMR spare parts from Hersey Meters Company based on standardization needs.

**RESOLUTION BOOK NO. 35 - PAGE 134**

**I. RESOLUTION NO. 12-250 - RESOLUTION AUTHORIZING EXECUTION OF EASEMENT TO PROGRESS ENERGY CORP. FOR ELECTRIC POWER SERVICE TO CITY BUILDING**

Summary: The consideration of a resolution authorizing the Mayor to execute an easement for a transformer pad and service line for the City Building.

Progress Energy is replacing an updating its facilities servicing the City Building. Currently, the service in the City Building is provided through three transformers located in the basement of the building. Access to the transformers is only through the building. These transformers are obsolete, and their location inside the City Building presents safety and service access issues.

The new location will be on the side of the employee parking lot on Marjorie Street, across the street from the entrance ramp to the garage. The connection to City Hall will be via underground cable running under Marjorie Street and the garage ramp.

This Project will modernize existing facilities, reduce the number of transformers from three to one, and increase the capacity for the future needs of the City Building. The easement will not hinder the use of Marjorie Street.

Pros:
- Replaces obsolete equipment;
- Increases capacity for service to City Building; and
- Improves safety and access

Con:
- New transformer will be above ground (but not in a particularly sensitive area).

Adoption of the resolution is recommended.

**RESOLUTION BOOK NO. 35 - PAGE 135**

**J. RESOLUTION NO. 12-251 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH NELSON, MULLINS, RILEY & SCARBOROUGH, LLP, FOR GOVERNMENTAL RELATIONS WORK**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement for legislative representation for services with Nelson, Mullins, Riley & Scarborough.

In 2011, the North Carolina General Assembly established a committee to study the possible consolidation of water systems and sewer systems in North Carolina. The committee's work focused on the Metropolitan Sewerage District of Buncombe County (MSD) and the City of Asheville's water system. The committee made several recommendations, including a recommendation that legislation be introduced in the 2013 General Assembly to consolidate the City's water system with MSD if the interested governments are unable to work out their own solution for consolidation. In 2012, legislation was introduced and enacted to enable a Metropolitan Sewerage District to perform the functions of a water authority, and to provide for the expansion of the governing board of MSD. Session Law 2012-203. The City is advised that legislation is likely to be introduced in the 2013 General Assembly to effectuate the consolidation.

The City has a substantial interest in any legislation that affects, or may affect its water system, and needs assistance advocating position in the legislature. The law firm of Nelson, Mullins, Riley & Scarborough, with an office in Raleigh, provides legislative representation and advocacy services. Dennis Wicker of that firm has submitted a proposal to assist the City in the legislature, including:

- Providing strategic counsel to the City regarding enactment of legislation affecting the water system.
- Monitoring and reporting on legislative activities related to the water system. Drafting proposed amendments to legislation, or proposed alternative bills regarding the water system.

The cost of providing this service is $60,000, plus costs, payable monthly at a rate of $5,000 per month.

This is consistent with Council's goal of maintaining control of the Water System, as expressed in Resolution No. 12-36, adopted February 14, 2012.

Pros:

- Strengthens the City's presence in the seat of State government at an important time.
- The firm has substantial experience in legislative matters at the State and Federal level, and is a full-service law firm.

Con:

- None noted.

The fiscal impact is $60,000 per year ($35,000 from FY 2012-13 budget). This cost will be absorbed within the existing FY 2012-13 Water Resources Fund budget.

Adoption of the resolution is recommended.

**RESOLUTION BOOK NO. 35 - PAGE 136**

**K. RESOLUTION NO. 12-254 - RESOLUTION DESIGNATING THE USE OF ADDITIONAL EMERGENCY SOLUTIONS GRANT FUNDING FOR THE ASHEVILLE-BUNCOMBE CONTINUUM OF CARE**

Summary: This is the consideration of a resolution to designate the use of additional Emergency Solutions Grant funding for the Asheville-Buncombe Continuum of Care.

As reported to and approved by Council, the State awarded the Asheville-Buncombe Continuum of Care $219,358 in Emergency Solution Grant Funds. The City, as lead agency and fiscal agent, had submitted an application for $164,444, to fund the following projects:

| | Emergency Response | Housing Stabilization | Total |
|---|---|---|---|
| **Organization** | | | |
| ABCCM (Steadfast House) | $ 12,445 | $ 23,112 | $ 35,557 |
| Helpmate | $ 15,000 | $ - | $ 15,000 |
| Homeward Bound | $ 10,000 | $ 80,360 | $ 90,360 |
| Salvation Army | $ 23,527 | | $ 23,527 |
| | | | |
| TOTAL REQUESTS | $ 60,972 | $ 103,472 | $ 164,444 |

We were additionally awarded $4,914 for use in Emergency Services and/or Housing Stability and $50,000 for use in Housing Stabilization and/or HMIS. The Homeless Initiative Advisory Committee's ESG Subcommittee reviewed the eligible uses for these funds, in the context of the overall funding for homelessness in the community, and the needs of community partners. It was clear to the subcommittee that the Homeless Information Management System (HMIS) will be a key element in continuing availability of funding for our community. Ensuring the integrity of managing local data into this system and keeping the system affordable to all agencies engaged in serving persons experiencing homelessness emerged as the top priority for the use of the $50,000 additionally granted for Housing Stabilization or HMIS. This includes managing the increased cost of the system to its users. The cost of the system to Asheville users will increase from $350/user to $63,000 for a total community fee in July of 2013, due to the changes in how the State has subsidized the cost of that system. The subcommittee recommended that the funds available for emergency services be made available to the Salvation Army, whose funding had been cut most significantly from last year's ESG program. The subcommittee's recommendations were endorsed by the full Homeless Initiative Advisory Committee.

This recommendation directly supports the Council Strategic objective to eliminate chronic homelessness in accord with the adopted Ten Year Plan.

Pros:

- The proposed use of funds will ensure the integrity of data used to assess the needs of persons experiencing homelessness in Asheville;
- The continued use of HMIS will be kept affordable to the network of agencies providing homeless services;
- Funding for the Salvation Army will help ensure the provision of emergency services by that agency.

Con:

- Funds are not recommended for use in direct services other than those provided by the Salvation Army. Funding for direct services, although increased this year through the use of a variety of funding resources, remains inadequate to meet the need.

The recommendation proposes the use of federal funds, passed through the State of North Carolina, to increase the City and County's ability to assess and respond to the needs for housing for persons experiencing homelessness, and additionally will assist in maintaining the affordability of the statewide information management system for local participating agencies. No City general funds are affected by this proposal.

The Housing and Community Development Committee recommends the following use of these additional funds:

| | Emergency Response | Housing Stabilization/HMIS | Total |
|---|---|---|---|
| **Organization** | | | |
| Salvation Army | $ 4,914 | | $ 28,441 (including original award of $23,527) |
| City of Asheville | $ | $ 15,000 | $ 15,000 |
| City of Asheville | $ | $ 35,000 | $ 35,000 |

The City of Asheville would use $15,000 to assist in funding a part-time temporary position to work with the Homeless Initiative Coordinator in collecting, reporting and improving HMIS data in our community. The $35,000 would be paid directly to the Carolina Homeless Information Network to offset HMIS user fees for the entire community of Asheville Buncombe Continuum of Care providers utilizing the system.

**RESOLUTION BOOK NO. 35 – PAGE 140**

Vice-Mayor Manheimer asked for public comments on any item on the Consent Agenda, but received none.

Vice-Mayor Manheimer said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Hunt moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. ASHEVILLE-BUNCOMBE CRIME-STOPPERS UPDATE

Mr. David Herbert, Chairman of the Asheville-Buncombe Crime-Stoppers, introduced his members in the audience and briefed Council on their activities of the past year and goals for the upcoming year.

Lt. Randy Sorrells, Crime-Stoppers Coordinator, provided Council with various statistics of the Crime-Stoppers Program.

On behalf of City Council, Vice-Mayor Manheimer thanked Mr. Herbert for his leadership and the entire Board for their dedication.

**B. ASHEVILLE DOWNTOWN COMMISSION UPDATE**

Mr. Bruce Hazzard, Chairman of the Asheville Downtown Commission, briefed Council on their activities of the past year and goals for the upcoming year.

On behalf of City Council, Vice-Mayor Manheimer thanked Mr. Hazzard for his leadership and the entire Commission for their dedication.

**C. TRANSPORTATION ADVISORY COMMITTEE/REGIONAL TRANSPORTATION PLANNING UPDATE**

Director of Transportation Ken Putnam said that the purpose of this report is to update City Council on the Long Range Transportation Plan (LRTP) and to seek an endorsement from City Council for the French Broad River Metropolitan Planning Organization (FBRMPO) to collect local travel survey data that would be used in the development of a completely new travel demand model instead of simply updating the existing model.

The Long Range Transportation Plan (LRTP) is a Federally-required long-term planning document that examines current and future transportation system needs. The French Broad River Metropolitan Planning Organization (FBRMPO) updates their LRTP every five years and it includes highways, public transportation, railways, bicycle, and pedestrian facilities. It also considers connections to aviation. The document is a fiscally constrained plan that is used by the FBRMPO to set priorities for transportation improvements in our area.

A travel demand model is the key tool used to develop the transportation alternatives for the LRTP. It is also used by the North Carolina Department of Transportation (NCDOT) to develop traffic projections for Transportation Improvement Program (TIP) projects and ultimately for project design. The model uses mathematical equations to estimate the travel patterns in an area. In order to develop the equations, information is needed about how people make decisions when they are traveling in an area. The best way to get this information is to have household surveys performed in the model area. In addition, population and employment data (typically referred to as socio economic data) is collected for the present year and estimated for future years based on how the FBRMPO expects the region to grow. The socio economic data is a direct link to how many "trips" or how much traffic there will be in the area.

Generally speaking a travel demand model is updated each time an LRTP is developed. Some updates are more extensive than others depending on the available data, how the area has grown, and the expected uses of the model. Most MPOs are using the new census blocks and data from the 2010 Census as an opportunity to perform major upgrades to their specific models. Then minor updates (mostly socio-economic data) would follow for the next few future updates. A good model might be useful for 15 to 20 years with only minor updates to the socio-economic data but little changes to the actual structure of the model. Travel patterns in an urban area can be very complicated.

It is not uncommon for areas to "borrow" data from other similar areas for developing models. However, local survey data would allow for the best understanding of the mix of users, travel demand, travel characteristics (for example, mode choice), and time of day profiles unique to the Asheville area. It would allow the transportation needs and recommendations to be better evaluated. Our seasonal population and retirees in the area might have different travel behavior and travel characteristics compared to other areas.

The travel demand model is used to determine where congestion is currently a problem and where congestion is expected to become an issue in the next 25 to 30 years. Depending on the level of detail in the model, it might be used to test various highway, transit and land-use scenarios so a MPO could have more confidence in the transportation decisions it is making. An improved model could help the local area answer the questions of the best combinations of future land use and transportation improvements. The model could assist in the evaluation of a project's impact to the overall transportation system.

Data from the travel demand model is also used in the NCDOT project prioritization process to rank projects. The model is used to demonstrate the impact of a specific project to the region and the more positive impact a project demonstrates, the better it shows up in the prioritization process from the NCDOT input. The model is used to validate the need for projects, especially key projects like improving I-26. If the model is based on local travel behavior it will better represent impacts of specific projects, whether a widening or new location or new connection facility. It is necessary to prove the transportation need for the project in order for it to be considered for inclusion into the State Transportation Improvement Program (TIP). Information from the model is essential for showing what the transportation demand on the system is with the project and without the project. Once a need is demonstrated, it is easier to get funding.

Many of the Long Range Transportation Plan (LRTP) stakeholders are not satisfied with the existing travel demand model because it used "borrowed" data. Also, the FBRMPO has expressed the desire to have a model that would better test transit and land use scenarios. The Transportation Advisory Committee (TAC) appointed a sub-committee during November 2010 to address this specific issue. Typically, the MPO pays for the model update from their fund balance plus a 20% local match. The NCDOT has agreed to fully fund a new travel demand model if the FBRMPO uses its fund balance and the individual members provide the local match to collect the local data. The estimated cost for the local travel survey is $360,000 and the local match equals $72,000. Asheville's share of the local match is about $15,000. Although this need was not budgeted during the normal budgeting process, staff is confident that it can be absorbed in the Transportation Department's current operating budget.

In summary, a travel demand model is recognized as the best method for a MPO to evaluate highway and transit options and to get the data needed to prove the validity of a project so that it could be considered for the State Transportation Improvement Program (TIP) and then ultimately funded.

Based on this information, staff would like City Council to endorse and encourage the FBRMPO to collect local travel survey data that would be used in the development of a completely new travel demand model. The new travel demand model would then be used to help develop the next LRTP update (FY 2014-15).

Mr. Putnam responded to various questions from Councilman Bothwell.

Councilman Hunt moved to endorse and encourage the FBRMPO to collect local travel survey data that would be used in the development of a completely new travel demand model. This motion was seconded by Councilman Smith and carried unanimously.

## D. WATER RESOURCES UPDATE

Project Manager Phil Kleisler updated City Council on the Water Resources process update from November 13 - 27, 2012. He then provided Council with the information sharing between the City and MSD.

Vice-Mayor Manheimer said that the MSD Planning Committee will be meeting this Friday to continue discussion on the water/sewer merger.

## E. QUARTERLY REPORTS

### Committee Chair Reports

Vice-Mayor Manheimer, Chairman of the Planning & Economic Development Committee, provided Council with a brief update on some major accomplishments during this quarter.

Councilman Bothwell, Chairman of the Public Safety Committee, provided Council with a brief update on some major accomplishments during this quarter.

### Financial Report

Budget Manager Tony McDowell provided Council with the following financial information which reflects the City's overall financial position for the fiscal year through September, 2012.

***Amendments.*** The General Fund budget presented in this first quarter report reflects the adopted budget of $89,922,437; along with five budget amendments approved by Council during the first quarter that totaled $566,527. A summary of the five amendments is presented below. None of the amendments involved an appropriation from fund balance. The $63,000 for the firing range mitigation project was appropriated from unexpended capital funds that were being held in reserve.

| | |
|---|---|
| Adopted Budget | 89,922,437 |
| Budget Amendments: | |
| NC Arts Council Grassroots Arts Grant | 50,431 |
| Linamar Economic Development Incentive | 200,000 |
| Firing Range Mitigation Project | 63,000 |
| Public Housing Police Unit Partnership | 217,000 |
| RENCI Grove Arcade Lease | 36,096 |
| 9/30/2012 Budget | $90,488,964 |

***Revenues.*** Through September 30, 2012, the City has collected $13,953,147 in General Fund revenue, which represents approximately 15.4% of the total General Fund revenue budget. Property tax revenue came in slightly under budget in FY 2011-12, and staff is projecting that trend of slower than anticipated growth to continue in FY 2012-13. Sales tax revenue is up 2.9% compared to the same period last fiscal year. The budget contemplated 5.0% growth in sales taxes, so year-end projections currently show a slight shortfall in this revenue. Staff is also projecting that state utility tax revenue will fall short of budget. On a positive note, revenue from electronic gaming operations has exceeded budget estimates to date. In total, *FY 2012-13 General Fund revenue is currently projected to come in $227,000 or 0.25% in under budget.*

***Expenditures.*** General Fund expenditures through September 30, 2012 total $18,083,399 or 20.0% of the budget, which is typical for this point in the fiscal year. Personnel expenses, the largest component of the General Fund budget, are running at the budget through the first quarter. Expenditures for fuel and fleet maintenance were running slightly over budget through the first quarter. Staff will continue to closely monitor these expenses throughout the

fiscal year. *Based on expenditure patterns in the previous fiscal year and the trends noted above, staff is projecting that expenditures will finish the year approximately $550,000 under budget, which will more than offset the expected revenue shortfall.*

***Fund Balance.*** The City ended FY 2011-12 with available fund balance of $13.63 million, which equated to 15.9% of FY 2011-12 expenditures. At the November 13th meeting, Council approved the use of $650,000 in fund balance for one-time employee salary bonuses. *Factoring in this fund balance usage along with current revenue and revenue projections for FY 2012-13, staff estimates that available fund balance at June 30, 2013 will be $13.3 million or 15.0% of estimated expenditures.*

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO UPDATE OUTDOOR LIGHTING STANDARDS

At the request of City staff, Councilman Hunt moved to continue this public hearing until December 11, 2012. This motion was seconded by Councilman Bothwell and carried unanimously.

### B. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED IN THE FALCON RIDGE AT HAW CREEK SUBDIVISION

**ORDINANCE NO. 4140 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED IN THE FALCON RIDGE AT HAW CREEK SUBDIVISION**

Urban Planner Julia Fields said that this is the consideration of an ordinance to extend the corporate limits of the City of Asheville to include property in the Falcon Ridge at Haw Creek Subdivision. This public hearing was advertised on November 16, 2012.

The following property owners (with property identification number shown) have petitioned the City of Asheville for the annexation of twenty-one lots or portions of lots located in the Falcon Ridge at Haw Creek Subdivision.

| PIN Number | Address | Property Owner |
|---|---|---|
| | | |
| Portion of 9659.62-2222 | Common Area – No Address | Falcon Ridge at Haw Creek, LLC |
| 9659.53-8826 | 91 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.63-0863 | 85 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.63-1689 | 79 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.63-3527 | 71 Boulder Creek Way | Ridge View Homes, LLC |
| 9659.63-4456 | 63 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.63-5380 | 57 Boulder Creek Way | George Ryan Trust & Martha E. Ryan Trust |
| Portion of 9659.63-6014 | 51 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| Portion of 9659.62-3969 | 44 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| Portion of 9659.63-1047 | 125 Boulder Creek Way | Rebecca G. Mulzer |
| Portion of 9659.53-9062 | 123 Boulder Creek Way | Angela M. Erwin |
| Portion of 9659.53-8036 | 119 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.53-9275 | 120 Boulder Creek Way | George Ryan & Jean M. Ryan |
| 9659.53-9366 | Infrastructure – No Address | Falcon Ridge at Haw Creek, LLC |
| 9659.53-9607 | 92 Boulder Creek Way | John Allen & Patricia J. Allen |

| | | |
|---|---|---|
| 9659.63-0548 | 82 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.53-9543 | 135 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.63-0486 | 133 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.63-1388 | 131 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.63-1292 | 127 Boulder Creek Way | Falcon Ridge at Haw Creek, LLC |
| 9659.63-3168 | 56 Boulder Creek Way | Emily S. Joyce Revocable Trust & Emily S. Joyce Trust |

The property to be annexed contains a total of 22.93 acres. One lot contains a home that is under construction and two lots contain water system infrastructure that has been inspected and approved by the City of Asheville. The property is contiguous to the primary corporate limits of the City of Asheville, is described in the ordinance, and qualifies for annexation by petition as set forth in NCGS 160A-31.

Pursuant to N. C. Gen. Stat. sec. 160A-31, a public hearing must be held prior to adopting any ordinance for voluntary annexation. If City Council decides to proceed with this request, the effective date for the annexation would be November 27, 2012.

Pros:

- Provides for the orderly growth of the City and the tax base through the acceptance of appropriate areas into the corporate limits where owners desire annexation.
- Complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas.
- Allows for service provisions for a new subdivision (of which a part is already in the City) enhancing the area with an urban level of service.

Con:

- Marginal costs for patrol.

At the City's current tax rate, the property, valued at $1,527,700.00, would generate approximately $ 6,416 annually. There are no financial impact or debt service payments required to a rural fire department as the area is currently serviced by the City of Asheville Fire Department under the Haw Creek Fire District agreement. The Fire Department has been receiving the .09/100 tax for servicing this area. This will no longer be paid by the property owners, thus the City will see a reduction in this revenue of $1,375. Therefore, the net financial gain for the City is $5,041.

City staff recommends City Council adopt the ordinance annexing the property within the Falcon Ridge at Haw Creek Subdivision that is not currently within the corporate limits.

City Attorney Oast noted that a Certificate of Sufficiency has been prepared by the City Clerk that will be incorporated into the record, and asked that the resolution be amended to include the following clause: " and that said petition was not submitted pursuant to subdivision (b) (1) or (j) of N.C. Gen. Stat. sec. 160A-31."

Vice-Mayor Manheimer opened the public hearing at 6:00 p.m.

Mr. Mike Anderson, engineer on the project representing the property owners, commended the developer for working with the neighborhood.

Vice-Mayor Manheimer closed the public hearing at 6:03 p.m.

Councilman Pelly said that the developer has been working closely with the community understanding how the development will have an impact on the neighborhood. The developer

has offered space for a community garden in addition to agreeing to install speed humps on Cisco Road.

Vice-Mayor Manheimer said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Bothwell moved for the adoption of Ordinance No. 4140, as amended by City Attorney Oast. This motion was seconded by Councilman Pelly and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 34**

**RESOLUTION NO. 12-252 - RESOLUTION ACCEPTING BOULDER CREEK WAY IN THE FALCON RIDGE SUBDIVISION AS CITY MAINTAINED STREETS**

Assistant Director of Public Works David Foster said that this is the consideration of a resolution to accept Boulder Creek Way as a City maintained street.

Code of Ordinances sec. 7-15-1(f)(4) requires that streets dedicated for public use be accepted by resolution of the City Council. The Falcon Ridge Subdivision annexation is being considered for approval by City Council on November 27, 2012, with an effective date of November 27, 2012.

Boulder Creek Way from Cisco Road to its dead-end is a privately-maintained street that has an average width of 20 feet with 24 inch curb and gutter, a length of .66 miles, and a right-of-way width that varies from 40 to 65 feet. A five foot back of curb sidewalk also exists along the entire length of the street.

The subject street was inspected by all applicable City departments and the general street conditions were determined to be satisfactory and any maintenance issues will be handled as part of the City's routine maintenance funding.

Following City Council's approval of this resolution, the subject street will be added to the official Powell Bill listing of City maintained streets.

This action complies with the City Council 2011-12 Strategic Operating Plan by accepting street infrastructure to help support the health growth of the City.

Pros:

- The City will receive Powell Bill funding from the N.C. Dept. of Transportation to help maintain the street.
- The streets will provide access and connectivity into a newly established residential neighborhood.

Cons:

- There are identified repairs the developer is completing to bring the road in full compliance with the Asheville Standards and Specifications.
- Powell Bill funds will not cover 100% of the total maintenance costs to maintain the street.

Other than the future maintenance obligations, there are no additional fiscal impacts to the City of Asheville.

Staff recommends that the Asheville City Council adopt a resolution accepting Boulder Creek Way as a City maintained street.

Vice-Mayor Manheimer said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Pelly moved for the adoption of Resolution No. 12-252. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35– PAGE 137**

**C. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF WELLINGTON ESTATES LOCATED ON 42 AIRPORT ROAD FROM HIGHWAY BUSINESS DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING WITH AN EXTENSION OF THE MANUFACTURED HOUSING COMMUNITY OVERLAY DISTRICT TO ALLOW THE EXPANSION OF AN EXISTING MANUFACTURED HOME PARK, INCLUDING MODIFICATION REQUESTS TO LOT SIZE, LOT WIDTH, SETBACKS, STREET STANDARDS, SIDEWALKS, STREET LIGHTS, AND OPEN SPACE**

**ORDINANCE NO. 4141 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY WELLINGTON ESTATES LOCATED ON 42 AIRPORT ROAD FROM HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT WITH AN EXTENSION OF THE MANUFACTURED HOUSING COMMUNITY OVERLAY DISTRICT TO ALLOW THE EXPANSION OF AN EXISTING MANUFACTURED HOME PARK**

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone Wellington Estates, located on 42 Airport Road, from Highway Business District to RM-16 Residential Multi-Family High Density District/Conditional Zoning with an extension of the Manufactured Housing Community Overlay District to allow the expansion of an existing manufactured home park, along with a modification request to lot size, lot width, setbacks, street standards, sidewalks, streetlights and open space. This public hearing was advertised on November 16 and 23, 2012.

The site consists of a 13.65 portion of a 61 acre parcel located at 42 Airport Road. The entire parcel is currently split zoned with the subject area zoned HB while the portion adjacent to the west is RM-16. Lots are zoned Commercial Industrial to the south and north as well as Industrial to the north.

This parcel was part of a larger area annexed into the City effective March 31, 2009. At the time of annexation and initial zoning, the parcel was partially developed with a manufactured home community similar to the existing conditions as shown on submitted plans. At the request of the owner, the lot was split zoned with RM-16 and the Manufactured Home Community Overlay on the western two-thirds with Highway Business designated on the section closest to Airport Road with the intent for commercial development on this front end, rather than a continuation of the residential use.

All 13.65 acres included in the petition have previously been used as a manufactured housing community and there are 29 manufactured homes existing on the rear 5.9 acres of the subject area. The applicant is proposing to create 49 new home sites on the front portion (7.75 acres) of the subject area, for a total of 78 residences. This results in just under the allowed maximum residential density for the overlay.

Wellington Drive, Barclay Drive, White Rock Drive and Avalon Drive are existing privately-maintained roads and all three provide connections to the rear of the site and existing manufactured housing community. Two parking spaces are provided at the driveway for each

unit and 10 visitor spaces are required to serve the community. Additionally, a four-foot wide sidewalk is required around and within the development (*see modification section for sidewalk*).

Street trees are required for this expansion as well as ten percent of the project area (1.365 acres) required to be set aside for open space (*see modification section for open space*).

The application is requesting the following standards to be modified, based on existing conditions and constraints and a desire to re-establish the previous development pattern for the site.

1. **Lot width** – 50' of width is required for all lots; *12 lots have less than 50' of width*
2. **Lot size** – a minimum of 5,000 square feet is required; *24 lots have less than 5,000 SF*
3. **Front setback** – a 20' front setback is required; *44 lots have less than 20' front setback*
4. **Property line setback** – units are required to be at least 35' from property lines; *25 lots border the property line*
5. **Street and ROW width** – a 30' ROW and 20' of pavement is required; Avalon, Barclay and White Rock Drives have less than the required standard and no designated ROWs; *no ROW intended and narrow roadways are existing*
6. **Sidewalks** – both internal and along Airport Road; *sidewalk will be added along Airport Road but none is proposed internally since the rest of the community does not have sidewalks and there are narrow streets with no ROWs*
7. **Streetlights** – streetlights are required; *less than the required number of streetlights are provided in this existing roadway network*
8. **Open space** – 10 percent of the project area (1.37 acres) is required to be designated as open space; *insufficient open space is proposed within the project area, the UDO provides for a fee-in-lieu option in this situation.*

This proposal was approved with conditions by the TRC on October 1, 2012. The Planning & Zoning Commission discussed this application at their meeting on November 7, 2012, and recommended approval with a unanimous vote (7-0). No opposition or communication has been received as of the writing of this report.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   Due to the previous use of this site as a manufactured housing community and the existing infrastructure (roads, water, sewer, driveways and concrete pads) the proposed re-establishment is compatible with the features and similar adjacent use.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

The re-establishment of a manufactured housing community on the subject area is a continuation of the adjacent, existing use and is not expected to injure the value of adjoining or abutting properties. This use has been in place on the adjacent site for decades.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
As a continuation of the existing adjoining manufactured housing community, the proposed use and development is an extension of the character, density, coverage and scale of the neighborhood. However, there are new standards in place for manufactured housing communities since the original establishment of this location, not all of which are in compliance. This does not necessarily create an inharmonious situation.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The proposed re-establishment of the manufactured home community generally conforms to goals of the City as detailed in the compliance sections of this report. Specifically, the development provides lower-cost residential options and supports and enhances multimodal transportation usage.

Requested modifications to the internal sidewalk and open space are contrary to stated goals of the Manufactured Housing Community Overlay District (Section 7-9-5) promoting the "health, safety and welfare of area residents through the provision of standards for infrastructure and open space." However, existing infrastructure creates site constraints and challenges to compliance.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
This site is located on Airport Road, less than a mile from Hendersonville Road, which places the project in an easily accessible location by car and Asheville transit (S3). The project has been reviewed by the Technical Review Committee and this previously developed site has existing infrastructure in place.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The City Traffic Engineer has stated that the existing traffic conditions have stabilized and will not be substantially changed by this project.

Pro:

- Provides lower-cost residential options in an area with existing infrastructure.

Con:

- Due to the existing infrastructure layout (utilities, roads), compliance with current standards cannot be met in many instances, resulting in a number of modification requests that are contrary to the goals of the Manufactured Housing Community Overlay District – most notably internal sidewalks and open space.

Staff recommends approval of the rezoning, the extension of the overlay and the site plan, re-establishing the manufactured housing community on this portion of the parent parcel. Staff notes that the layout of this community was put in place prior to the current standards, justifying the difficulty with compliance and the need for the multiple modifications. Staff recommends the applicant pay a fee-in-lieu for deficient open space.

Vice-Mayor Manheimer opened the public hearing at 6:11 p.m.

Mr. Chris Day, engineer for the developer, said that this manufactured housing community has been in existence for the past 40 years. He clarified that actually they will have 41 grandfathered units, which increases the total number of units in the 13.6 acres to 90. Mr. Morosani, the developer, will be building a street in front of their property on Airport Road. He will also be adding street trees in the community, and a new 6-inch water line to a new fire hydrant. Regarding open space, had this been a new development they would have included the open space requirements; however, since this is an existing community, they are requesting that the open space requirement be waived and that they not be required to pay the fee in lieu of payment either.

Mr. Morosani said that he will be adding another 49 units of affordable housing that is very well needed in the south area. He asked Council to consider waiving the fee in lieu of payment for the open space, which will be approximately $50,000.

Vice-Mayor Manheimer closed the public hearing at 6:16 p.m.

In response to Councilman Pelly, Mr. Morosani said that school buses do run through the community and they also have garbage collection.

There was a brief discussion about the need for sidewalks on Airport Road. Because there is a vacant parcel next to Wellington Estates, it was noted that when the outparcel is developed sidewalks along the frontage on Airport Road will also be required.

Councilman Bothwell found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4141, to approve of the conditional zoning request from Highway Business District to RM-16 Residential Multi-Family High Density District/Conditional Zoning with an extension of the Manufactured Housing Community Overlay district for the project identified as Wellington Estates located at 42 Airport Road including approval of the proposed Site Plan and Extension of the Manufactured Housing Community Overlay, and approval of the modification requests to lot size, lot width, setbacks, street standards, sidewalks, streetlights and open space, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (6) Easement for a bus shelter is required and must be received and recorded prior to final zoning approval; and (7) Fee in lieu for open space must be received prior to final zoning approval. This motion was seconded by Councilman Hunt.

Councilman Davis spoke in support of the conditional zoning but was unsure about supporting staff's recommendation for a fee in lieu of payment for open space due to the amount of mature trees and number of affordable housing units.

In response to Vice-Mayor Manheimer regarding the use of fee in lieu of funds, City Attorney Oast said that the Code states that "Funds collected in this manner shall be maintained

in a separate account and shall be used to purchase or to enhance recreational use of property necessary to implement features of the greenway master plan or the Parks and Recreation Master Plan of the City of Asheville provided such features are reasonably proximate to the site(s) from which the funds are collected."

Councilman Smith pointed out that south Asheville has not received funding for parks and this would be an excellent opportunity to get a little closer for those amenities in that area.

Councilman Bothwell moved to amend the original motion subject to all conditions except to delete condition 7 (fee in lieu for open space must be received prior to final zoning approval). This motion was seconded by Councilman Davis.

City Attorney Oast asked Council for time to investigate whether waiving the fee in lieu of for open space will require an ordinance amendment. If Council wishes, they can approve the conditional zoning and continue the item on the open space fee waiver until their next meeting.

Councilman Bothwell withdrew his motion to amend the original motion (deletion of condition 7).

Councilman Bothwell then moved to amend the original motion subject to all conditions except for the condition on the open space fee waiver which Council will make a decision at their next meeting. This motion was seconded by Councilman Hunt.

Councilman Smith said that we have a policy in place about open space or a fee in lieu of payment. He felt if we change that policy we may be setting a precedent.

Councilman Bothwell felt this is different than a new development as it is going back to a previous use.

The amended motion made by Councilman Bothwell and seconded by Councilman Hunt carried unanimously.

**ORDINANCE BOOK NO. 28 - PAGE 36**

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 12-253 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH STEWART ENGINEERING INC. TO DEVELOP ARCHITECTURAL AND ENGINEERING CONSTRUCTION DOCUMENTS FOR THE BEAUCATCHER GREENWAY**

Director of Parks, Recreation & Cultural Arts Roderick Simmons said that this is the consideration of a resolution authorizing the City Manager to enter into a contract with Stewart Engineering, Inc. to develop architectural and engineering construction documents for the Beaucatcher Greenway for an amount not to exceed $310,000.

In February 2009, City Council approved the Beaucatcher Greenway identified as a priority greenway in the Parks, Recreation Cultural Arts, and Greenways Master Plan. In that same year, City Council adopted the Asheville Downtown Master Plan that supports the development of vista parks to provide permanent public views of the downtown via the Beaucatcher Greenway.

In September 2009, City Council accepted a grant from the North Carolina Parks and Recreation Trust Fund to support acquisition of the Beaucatcher Overlook property to facilitate

the development of the Beaucatcher Greenway. The grant stipulates greenway development must be complete within a five-year period of the grant award date.

In November 2009, City Council directed staff to proceed with a land exchange with the owners of Festiva to enhance and extend the Beaucatcher Greenway.

Funds in the amount of $1,300,000 to support Beaucatcher Greenway construction drawings and construction were approved in the FY 2011-2012 capital improvement budget.

Staff followed the municipal process to conduct the request for qualifications to seek qualified, professional firms to develop construction documents. Staff received 14 applications, and interviewed four finalists. After thorough review and evaluation, staff recommended Stewart Engineering, Inc., located at 421 Fayetteville Street, Raleigh, North Carolina as the most qualified to perform the architectural and engineering services for the Beaucatcher Greenway.

This action complies with the City Council Strategic Operating Plan in that it contributes to the Multimodal Transportation Goal to integrate and implement a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit, greenways, streets, rivers and access to the river, and other system improvements resulting in funding priority list. This action also complies with the Parks, Recreation, Cultural Arts and Greenway Master Plan in that it increases the urban network of parks and greenways in the downtown Asheville area.

Pros:

- Expand the ability to provide recreation resources to a number of residences and neighborhoods that can be linked to this corridor
- Provide a unique experience and views with its Appalachian forest setting that overlooks the downtown and distant mountains.
- Implement the original vision of the 1922 Asheville City Plan for a landmark linear park on Beaucatcher Mountain that would benefit the entire community
- Provide a recreational corridor that will unite the Beaucatcher and White Fawn Reservoir Parks that will be developed in the future.

Con:

- Once complete, the project will require additional maintenance resources.

The $310,000 to support the contract is budgeted in the capital improvement budget in the Multi-Modal Investment for greenway development.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Stewart Engineering, Inc. to develop the architectural and engineering construction documents for the Beaucatcher Greenway for an amount not to exceed $310,000.

In response to Councilman Hunt, Mr. Simmons said that the City should be able to do the entire project for no more than the $1.3 Million already set aside, but that he will also be seeking grant funds.

When Councilman Hunt asked if we anticipated the greenway being routed through Ardmion Park Drive, City Attorney Oast said that the greenway does utilize Ardmion Park Drive. He said they have concluded that it is a dedicated and unopened right-of-way available for this use.

Vice-Mayor Manheimer disclosed that a member of her law firm does represent the Ardmion Park Drive Homeowners Association; however, it is the opinion of City Attorney Oast that it does not present a conflict of interest for her voting on this particular issue.

When Vice-Mayor Manheimer asked for public comments, none were received.

Vice-Mayor Manheimer said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hunt moved for the adoption of Resolution No. 12-253. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 139**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Rev. Christopher Chiaronmonte addressed City Council.

**Closed Session**

At 6:50 p.m., Councilman Pelly moved to go into closed session for the following reason: (1) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or initial employment of an individual prospective public officer or employee. The statutory authorization is contained in G.S. 143-318.11 (a) (3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11 (a) (6). This motion was seconded by Councilman Bothwell and carried unanimously.

At 7:25 p.m., Councilman Hunt moved to come out of closed session. This motion was seconded by Councilman Bothwell and carried unanimously.

**VIII. ADJOURNMENT:**

Vice-Mayor Manheimer adjourned the meeting at 7:25 p.m.

Magdalen Bulleson
CITY CLERK

MAYOR

110

Tuesday – December 11, 2012 – 3:30 p.m.
First Floor North Conference Room – City Hall

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**Financial Impact Analysis of Water and Sewer Merger Study & Utility Governance Study**

Director of Finance and Management Services Lauren Bradley provided Council with a PowerPoint that covered the financial impact analysis, water financial/valuation assistance, and governance models. Asheville conducted an analysis (1) to provide data and analysis to city Council in response to the charge in the Legislative Committee's report; (2) to evaluate the economic impact of various merger scenarios to all stakeholders - city taxpayers, water ratepayers and sewer rate payers; and (3) to compliment the body of research and analysis conducted by MSD.

She briefly summarized the executive summary presented below which uses the financial analysis included in the Metropolitan Sewerage District of Buncombe County's report entitled "Impact Study on MSD Rate Payers of Proposed Consolidation/Merger," including the projected staffing levels and associated financial impacts of a consolidated utility. In addition, the City of Asheville assumed in its calculations:

- If the sewer utility were consolidated under the City of Asheville, the City would add staffing and other costs to fully replace and provide services that are currently provided by MSD's central service structure. Most of the central service costs for operation of the wastewater utility would be added to the City of Asheville's General Fund and then allocated across the entire organization according to the methodology currently utilized in its Cost Allocation Plan (CAP), resulting in a cost of central services for the sewer utility of $1,901,033.
- A high level cost allocation analysis was conducted in each scenario that involved water and sewer utilities consolidating under the City of Asheville. In each scenario, it was assumed that central service costs will be allocated to the sewer utility in the same percentages that they are allocated to the water utility in the City's current CAP.
- A high level cost allocation analysis was conducted in each scenario that involved water and sewer utilities consolidating under MSD. In each scenario, it was assumed that central service costs would be allocated to the water and sewer utility based on the each utility's respective share of customer accounts.
- An inflationary rate of 3 percent was assumed for salaries, fringe benefits and operating costs.
- Evaluation of cost impacts associated with compensation for utility assets was beyond the scope of this analysis. However, it should be noted that fair compensation for utility assets under either merger scenario would have an economic impact on the owners of those assets. Compensation for fair value of utility assets can come in many forms and over time but is necessary to ensure ownership interest is not diluted in a merger scenario. In addition, payment of compensation for the fair value of either utility system at the future expense of higher water and/or sewer rates should be carefully considered and avoided.

- Fixed costs associated with central services currently paid for by the water utility are quantified as an operating loss to City taxpayers when the utility is consolidated under MSD since those costs cannot be recovered by another non-General Fund source. That amount, in the current year, is estimated to be $1,813,698. Likewise, elimination of the water utility's capital contribution to community infrastructure ("Sullivan Act" allocation) is quantified as a financial loss to City taxpayers under MSD consolidation. That amount, in FY 2014, is estimated to be $1,341,262.
- Dollars presented have not been adjusted for net present value."

She then summarized the options and the findings below, using charts to explain the various options:

Option 1. Consolidation under MSD - Finding: A consolidated utility under MSD does not produce economic benefits to all stakeholders. This model could produce savings for sewer ratepayers while resulting in cost increases for city taxpayers and water ratepayers. Under this scenario, the economic benefit of owning the water utility is transferred from the city taxpayer and to the sewer ratepayer, unless fair compensation is included in such a transfer. Based on the water utility's 2013 budget, the cost to produce a gallon of water sold $.0069. Under this scenario, the potential average annual cost savings to the water ratepayer per gallon sold is $.000048, which would bring the cost per gallon sold to $.00685 - an impact that is less than 1/10th of a quarter of a penny. Said another way, for every 1,000 gallons of water sold, the water system would see a savings of 5 cents. This level of savings would have no impact on future water rates.

Option 2. Consolidation under the City of Asheville - Finding: A consolidated utility under the City of Asheville produces economic benefits to all stakeholders. Under this scenario, the economic benefit of owning the water utility is maintained, to some degree, by the city taxpayer and not transferred to another stakeholder group. At the same time, economies of scale would produce savings within the sewer utility. The cost savings to the water utility, while positive, would likely have an immaterial impact on water rates.

Option 3. Status Quo - Finding: No stakeholders are at risk of economic loss under the status quo scenario. Both utilities are financially stable with solid financial results and strong credit ratings. Both systems have ample capacity to accommodate future demand, and both utilities utilize multi-year financial forecasts to plan and manager capital improvements and utility rates. Water and wastewater rates are projected to remain at affordable levels during the next ten years while funding necessary capital improvements.

Option 4. Functional Consolidation - Finding: All stakeholders could benefit economically from considering functional consolidation in centralized management and administrative functions. The financial analysis of consolidation under MSD and the City shows that the greatest opportunity for cost savings is presented by sharing central service functions, which could be accomplished through an interlocal agreement. Government units can issue debt to finance improvements of utility systems under an interlocal agreement. The efficiencies associated with functional consolidation would be enhanced by avoiding the significant upfront costs of operational consolidation that would be required for new facilities, IT infrastructure and software, transaction costs and other start-up expenses.

There was discussion surrounding the different options outlined by Ms. Bradley.

Mayor Bellamy said we received information that Cane Creek Sewer District has been added and information from a 2009 study which indicates that they have quite a bit of need for improvements. The original Study Commission mandated all the water and sewer systems within Buncombe County be looked at. She felt we needed to see a detailed analysis of what the true impact would be if we added Montreat, Black Mountain, Woodfin, Weaverville, etc. She felt we might consolidate purchases or partner on wholesale infrastructure or something to that effect to

get them to a better scenario. In addition with the recently added Cane Creek Sewer District, she felt we need to see their true needs and how does that cost all of us if we consolidate. We should ask MSD what the model would look like for them to consolidate only with Cane Creek Sewer District (and leave water out). She supported asking our MSD representatives to ask the MSD Board to look at those analyses because water and sewer won't see the same cost savings because they are two different functions.

Mr. Doug Bean, with Raftelis Financial Consultants (RFC), Asheville's water rate consultant, provided Council with a PowerPoint giving a brief overview of the financial assistance; valuation assistance; and governance and regional approaches.

Regarding financial assistance, they were asked to (1) review MSD's "Impact Study on MSD Rate Payers of Proposed Consolidation/Merger"; (2) Review Asheville staff's "Financial Impact Analysis: Water and Sewer Merger Study"; and (3) Assist in updating Asheville's rate model. Regarding the financial review, (1) The financial information used in the rate model is accurate; (2) The indirect cost allocation appears reasonable and is consistent with other similar utilities; and (3) RFC concurs with the information provided in the city's study, the "City of Asheville-Financial Impact Analysis".

Their valuation assistance consisted of (1) Market Approach (a) Based on comparable sales of similar utilities; (b) Can be used for public or private transactions; and (c) Transactions exist for sales of public utilities in NC and across the country; (2) Income Approach (a) Based on the premise that a utility is worth the present value of its future earnings; (b) Current Asheville utility cash flows are positive; and (c) Utility is valued into perpetuity, which cannot be negative or utility will not be able to continue to operate; and (3) Asset/Cost Approach (a) Based on the cost of the existing assets; and (b) Three Methods (i) Replacement Cost, (ii) Reproduction Cost New Less Depreciation "Preferred method for Asset/Cost Approach"; and (iii) Original Cost Less Depreciation (Net Book Value).

He used a chart explaining the reproduction cost new less depreciation.

Their utility governance analysis consisted of (1) identify benefits and regional drives of regional cooperation; (2) research; (3) case studies; and (4) experience. He then reviewed the governance and regional approaches (1) North Carolina utilities; (2) regional cooperative models; (3) regional drivers; (4) legal structures; (5) governance models; (6) case studies; and (7) findings & conclusions.

Key findings are (1) regionalization (a) Most utilities participate in some form of regional collaboration; (b) Primary drivers are financial and capacity; and (c) There are many different regionalization models; and (2) governance (a) No discernible difference in utility performance based on governance structure in North Carolina; (b) The distinction between "accountability vs. business" model is not pronounced in North Carolina; and (c) City Council/County Commission is the most common governance structure.

Two conclusions made are (1) Regional utilities could benefit from additional water system collaborations and additional wastewater collaborations; and (2) Shared services/functional consolidation could achieve timely savings while avoiding the expense and time of changing a governance structure.

Each Council member asked various questions and stated comments that supported Asheville keeping its water system. A major topic of discussion was how the implications of this will be statewide because this is an amendment to general law, not just a local act.

At Mayor Bellamy's suggestion, it was the consensus of Council to send a letter to MSD, through our City representatives, and have them look at (1) an MSD/Cane Creek Sewer District consolidation; (2) a consolidation with the other water districts in Buncombe County per the

Legislative Study Committee, because the only thing that has been looked at was the City of Asheville water system; and (3) the numbers we found in our evaluation to make Asheville whole opposed to the number they put forward, The City of Asheville's water system has an $18 Million healthy Fund Balance which she thought would be wrong to be used to pay for other sewer system improvements.

Mayor Bellamy said that when we send our information to the legislators, we need to inform them of the cost it took to produce all this information and how we did not take this initiative lightly.

Mayor Bellamy acknowledged Representative Susan Fisher in the audience and thanked her for her willingness to hear all sides of the issue.

At 4:42 p.m., Mayor Bellamy adjourned the worksession.

Tuesday – December 11, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Hunt gave the invocation.

**I. PROCLAMATIONS:**

**A. RESOLUTION NO. 12-255 - RESOLUTION IN MEMORY OF FORMER CITY MANAGER JAMES L. WESTBROOK JR.**

Mayor Bellamy read the resolution in memory of former City Manager James L. Westbrook Jr.

Councilman Davis moved for the adoption of Resolution No. 12-255. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

**RESOLUTION BOOK NO. 35 - PAGE 141**

**B. RECOGNITION OF DR. WESLEY GRANT SR. SOUTHSIDE CENTER RECEIVING THE PLATINUM LEED CERTIFICATION**

Mayor Bellamy was pleased to note that the Dr. Wesley Grant Sr. Southside Center received the City's first Platinum LEED certification. Ms. Jane Mathews spoke about the importance of LEED certification and introduced some of the design and construction team in attendance. Mayor Bellamy thanked Ms. Mathews for her leadership on this project.

At Mayor Bellamy's request, it was the consensus of Council to install a plaque on the Dr. Wesley Grant Sr. Southside Center to include the seated Council and the architect for the project.

**C. EMPLOYEE RECOGNITIONS**

City Manager Jackson recognized (1) Senior Firefighter Jay Bettencourt as Firefighter of the Year for the State of North Carolina; (2) Fire Chief Scott Burnett, Battalion Chief Chris Budzinski and member of Command Staff for the re-affirmation of the Fire Department's accredited agency status from the Center for Performance Excellence; (3) APD Sgt. Louis Tomasetti for receiving the NC Gang Investigator of the Year Award; (4) Superintendent of Water Maintenance Ivan Thomas as 2012 Distribution System Operator of the Year; and (5) Scott Brazil, Tommy Carver, Don Fender, Bobby Roberts, Frank Stroupe, Brandon Yates, Lee Morrison, and Bryan Abbajay for receiving the Road Scholar Certification through North Carolina State's Institute for Transportation Research and Education.

Mayor Bellamy thanked the employees on what they do on behalf of the City of Asheville and City Council. She was proud of City staff and looked forward to highlighting more accomplishments.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 27, 2012**

**B. RESOLUTION NO. 12-256 - RESOLUTION ADOPTING THE 2013 CITY COUNCIL MEETING SCHEDULE**

**RESOLUTION BOOK NO. 35 - PAGE 142**

**C. APPROVAL OF THE 2013 SCHOOL BOARD APPOINTMENT PROCESS**

**D. RESOLUTION NO. 12-257 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH STEPPE CONSTRUCTION INC. FOR THE PROJECT KNOWN AS 2005 AND 2010 ANNEXATION AREA SEWER SYSTEM IMPROVEMENTS**

Summary: The consideration of a resolution authorizing the City Manager to execute on behalf of the City of Asheville a contract in the amount of $116,521 plus a contingency of 20% ($23,000) with Steppe Construction Inc. for the project known as 2005 & 2010 Annexation Area Sewer System Improvements, City of Asheville Project # SC-05-06-001 & SC-10-11-001.

City Council had approved the Annexation Services Plans for the Airport Road section of the 2005 Annexation area on June 28, 2005, and on May 25, 2010 for the 2010 Airport Road Annexation, respectively. Both of them require that an 8 inch sewer line be installed to bring the service to substantially the same level as other parts of the City. One section of sewer line from the 2005 Annexation is not included in this contract due to the lack of the required easement. We will continue to seek that easement in the future, but did not want to delay the construction of the other sections. The funds for that work will be retained in the 2005 budget for use when the easement is obtained. The project was advertised and on October 30, 2012, bids were opened with Steppe Construction Inc., of Mill Spring, NC, being the lowest responsible bidder with a bid of $116,521: This was well below the Engineer's Estimate of $166,805 and below the $200,000 construction budget set aside for the project. A 20% contingency ($23,000) has been added to allow payment for any unforeseen costs that typically arise during construction. The work produced from contract would help to fulfill the City's obligation as outlined in the 2005 and 2010 Annexation Services Plans for the Airport Road area.

This action complies with the City Council Strategic Operating Plan in that it will enhance the infrastructure within our municipal limits, and fulfill the City's obligation outlined in the 2005 and 2010 annexation of the Airport Road area.

Pros:

- Will allow for the construction of approximately 1,025 linear feet of new sanitary sewer within the Asheville City limits.
- Will fulfill the City's obligation of the 2005 and 2010 annexation of the Airport Road area.
- Will receive funds from MSD's Revenue Sharing program.
- Once turned over to MSD, the City will not be responsible for future maintenance of the sanitary sewer system.

Cons:

- The project will cost the City approximately $116,521.
- Project management and contract administration will consume staff time.

This project will cost approximately $116,521. The budget for this project is already included in the City's adopted Capital Improvement Program. Once the sewer system improvements are completed, MSD's Revenue Sharing Program should provide the City with 50% of all collected fees from the use of this sewer system for the next ten years.

City staff recommends City Council adopt the resolution awarding the contract to Steppe Construction Inc. and authorizing the City Manager to execute on behalf of the City of Asheville a contract in the amount of $116,521 plus a contingency of 20% ($23,000) with Steppe Construction Inc. for the project known as 2005 and 2010 Annexation Area Sewer System Improvements, City of Asheville Project # SC-05-06-001 and SC-10-11-001.

**RESOLUTION BOOK NO. 35 - PAGE 143**

**E. ORDINANCE NO. 4142 - BUDGET AMENDMENT TO ACCEPT ENERGY EFFICIENCY REBATE FUNDS FROM PROGRESS ENERGY FOR THE FLEET LIGHTING RETROFIT**

Summary: The consideration a budget amendment, in the amount of $21,801, from Progress Energy, to appropriate energy efficiency rebate funds.

The proposed budget amendment is to appropriate energy efficient rebate funds that have been received by the City but not included as part of the adopted General Fund budget. Once accepted these rebate monies will be used to fund operating costs in the City's green and sustainability program.

This action supports Council strategic goals by continuing to identify strategies and costs for maintaining the city's annual energy reduction goal of 4%.

Pro:

- Accepting this rebate check will allow the city to continue investing in improving energy efficiency in public infrastructure.

Con:

- None can be identified.

The $21,801 will be used as revenue to further fund energy efficiency programming.

City staff recommends City Council adopt the budget amendment in the amount of $21,801 to appropriate energy efficiency rebate funds that have been received by the City from Progress Energy.

**F. ORDINANCE NO. 4143 - TECHNICAL BUDGET AMENDMENT TO FUND THE CITY'S ANNUAL CONTRIBUTION TO THE N.C. STATE TREASURER'S OPEB FUND**

Summary: The consideration of a technical budget amendment in the amount of $200,000 from General Insurance Service Fund Reserves to fund the City's annual contribution to the North Carolina State Treasurer's Other Post Employment Benefit (OPEB) Fund.

On December 13, 2011, City Council approved a resolution authorizing the City's participation in the State Treasurer's investment trust for local government OPEB funds and related Trust Agreement beginning with an initial contribution of $3,025,866, which was made during FY 2011-12. For the year ended June 30, 2012, the actuarially determined Net OPEB Obligation totaled $1,849,254. This amount relates to both current and future post-employment retiree health care costs, reduced by actual expenses paid by the City. The prior year's Net OPEB Obligation totaled $3,025,865, which the City subsequently funded in full with reserves held for this purpose. A one-time deposit established an OPEB trust, which is invested through the State Treasurer. While the City is unable to fully fund the current year's Net OPEB Obligation, Council may recall that staff outlined a plan on December 13, 2011, to incrementally increase the City's annual budget allocation in FY 2013 and beyond to meet this annual required contribution.

In order to make that contribution, Council must approve a budget amendment to provide authorization for the appropriation of the cash and the subsequent payment to the North Carolina State Treasurer's OPEB Fund. The contribution is being funded through an appropriation from unassigned internal service fund reserves.

This action complies with City Council's strategic goal to manage the City to the highest level of fiscal responsibility.

Pro:

- Provides budget authorization for the City's annual contribution to the State Treasurer's investment trust for local government OPEB funds and related Trust Agreement.

Con:

- While this payment moves the City closer to meeting its annual required contribution, the City will have to plan for and budget a recurring contribution from the General Fund and other funds in the future.

After funding the initial OPEB liability, as of June 30, 2012, the General Internal Services Fund had $1,393,802 in unrestricted net assets. This additional appropriation of $200,000 will reduce unrestricted net assets to $1,193,802. Staff recommends that this amount remain in the Internal Services Fund to serve as reserves for the City's self-insurance programs.

City staff recommends City Council approve the technical budget amendment in the amount of $200,000 from General Insurance Service Fund Reserves to fund the City's annual contribution to the North Carolina State Treasurer's OPEB Fund.

When Ms. Judy Strong urged the City not to participate in the OPEB Fund but to instead use 401-K for retirements, Director of Finance & Management Services Lauren Bradley said that the OPEB benefits represent health care benefits that have been promised to employees after they retire. The City did discontinue this benefit for new hires. We are legally required to continue to fund that benefit. She also noted that the City does have a 401-K program for retirement.

ORDINANCE BOOK NO. 28 - PAGE 41

**G. ORDINANCE NO. 4144 - BUDGET AMENDMENT TO PURCHASE AND INSTALL A BUS SHELTER AS PART OF CONDITIONAL ZONING OF CHAMBER OF COMMERCE/LENOIR RHYNE UNIVERSITY PROPERTY ON MONTFORD AVENUE**

Summary: The consideration of a budget amendment, in the amount of $16,200, from outside contributions, to purchase and install a bus shelter and concrete pad as part of the conditional zoning of the Chamber of Commerce/Lenoir Rhyne University property.

The Chamber of Commerce and Lenoir Rhyne University are required under a stipulation of the conditional zoning of the property located at 36 Montford Avenue to install a bus shelter at or near the location of the current bus stop. This action was reviewed and approved by City Council on February 28, 2012.

Due to high cost estimates, City staff determined that the City would partner with the Chamber of Commerce and Lenoir Rhyne University via an agreement whereby the Transportation Department would purchase and install the bus shelter and concrete pad as an acceptable method of fulfilling the condition of approval. The property owner will grant the City an appropriate easement to perform all the work and to maintain the shelter in the future.

The total turnkey project cost is $16,200, which will be funded with contributions from the Chamber of Commerce and Lenoir Rhyne University. Due to the impending winter weather, the work will not begin until spring 2013. The project should be completed by the end of the current fiscal year.

This action complies with the City Council 2012-13 Strategic Operating Plan within the fiscal responsibility focus area by leveraging external partnerships for pursuing capital improvements and infrastructure projects.

Pros:

- The City will purchase and install a needed bus shelter and associated concrete pads using funds provided through a conditional zoning process.
- The Chamber of Commerce and Lenoir Rhyne University have provided funds in the amount of $16,200.

Con:

- The City will incur minimal administrative costs.

The total turnkey project cost is $16,200. The minimal administrative costs will be absorbed in the current Transportation Department operating budget.

Staff recommends that City Council adopt a budget amendment in the amount of $16,200 from outside contributions to purchase and install a bus shelter and concrete pad as part of the conditional zoning of the Chamber of Commerce/Lenoir Rhyne University property.

ORDINANCE BOOK NO. 28 - PAGE 43

**H. ORDINANCE NO. 4145 - TECHNICAL BUDGET AMENDMENT TO APPROPRIATE FROM RESERVED FUND BALANCE THE REQUIRED BUDGET AUTHORIZATION FOR PRIOR YEAR CONTRACTS, PURCHASE ORDERS AND OTHER CARRY-OVER APPROPRIATIONS THAT HAVE ROLLED FORWARD TO FISCAL YEAR 2012-13**

Summary: The consideration of a technical budget amendment in each of the City's annual operating funds to appropriate from reserved fund balance the required budget authorization for prior year contracts, purchase orders, and other carry-over appropriations that rolled forward to Fiscal Year 2012-13.

As part of its ongoing operations, the City enters into various contracts and purchase order agreements throughout the fiscal year. When these contracts and purchase orders are entered into, budget funds are encumbered for the full amount of the expected purchase. Often these contract and purchase orders are not fully completed and paid in one fiscal year. North Carolina General Statutes provide authorization for local governments to reserve the unexpended portion of these prior year commitments and roll those budgets forward to the new fiscal year.

As a part of the Fiscal Year (FY) 2011-12 annual audit, staff identified prior year commitments and carry-over appropriations to roll forward to FY 2012-13, and these dollar amounts were deducted from the unassigned fund balance amounts that were reported in the Comprehensive Annual Financial Report. The technical budget amendment will provide authorization to officially appropriate these amounts in the FY 2012-13 budget for each of the City's annual operating funds.

This action complies with City Council's strategic goal to manage the City to the highest level of fiscal responsibility.

Pro:

- Provides budget authorization for prior year contracts, purchase orders, and other carry-over appropriations that rolled forward to FY 2012-13.

Con:

- None.

As noted above this budget amendment simply provides budget authorization for prior year commitments which have already been reserved in the City's FY 2011-12 financial statements. There is no impact on available fund balance in the City's operating funds.

City staff recommends City Council approve the technical budget amendment in each of the City's annual operating funds to appropriate from reserved fund balance the required budget authorization for prior year contracts, purchase orders, and other carry-over appropriations that rolled forward to FY 2012-13.

**ORDINANCE BOOK NO. 28 - PAGE 45**

**I. ORDINANCE NO. 4146 - BUDGET AMENDMENT FOR PHASE III OF RENOVATIONS FOR THE U.S. CELLULAR CENTER**

Summary: The consideration of a budget amendment, in the amount of $1,889,518, to accept funding from various sources to establish a Capital Budget for Phase III of the renovations for the U.S. Cellular Center to meet requirements for the Southern Conference Basketball Tournament and other major events.

The City and its partners have been actively engaged in renovations to the U.S. Cellular Center. This partnership has resulted in continued funding for additional construction. In July 2012, the Buncombe County Tourism Development Authority awarded the City $1.375 Million in Product Development Grant Funds for renovations to the ExploreAsheville.com arena. The City has one remaining payment of $150,000 from the original $2 Million grant awarded in 2010. Buncombe County Commissioners partnered with the City by approving $1,200,000 for the project, of which $73,460 is allocated for the pending renovation phase. The Civic Center Enterprise Fund Capital Improvement Program (CIP) program will provide $130,000 for this

portion of the project. The Asheville ABC Board's Education Fund will provide $25,000 for funding for equipment for ABC educational programming. The U.S. Cellular naming rights agreement will provide $72,118 towards the pending project. There are also some cost savings from previous renovation projects that will be used in the pending project.

Source of Funds:

| | |
|---|---|
| TDA Grant #1 | 150,000 |
| TDA Grant #2 | 1,375,000 |
| Buncombe County | 73,460 |
| CIP | 130,000 |
| ABC | 25,000 |
| US Cellular Naming Rights | 72,118 |
| Savings From Roof | 53,940 |
| Savings from General Project | 10,000 |
| TOTAL | 1,889,518 |

The action supports current and prior Strategic Operating Plan Goals: Fiscal Responsibility, by leveraging internal and external partnerships for pursuing capital improvement projects and infrastructure projects; Green and Sustainable, by taking the City's sustainability program to the next level, which will include plumbing improvements, and energy efficient lighting; and the Job Growth and Community Development Focus Area, by creating more collaborative and effective working partnerships between the City of Asheville, the business community, and other key organizations to effectively manage the City's regulatory environment while accomplishing economic development goals.

The action also complies with the Civic Center Commission's Strategic Plan, as well as recommendations of the 2006 Civic Center Task Force. The action supports the Downtown Master Plan, which calls for a near-term action step to maintain and upgrade the existing Civic Center and Thomas Wolfe Auditorium to serve for at least the next five to ten years.

Pros:

- Action meets the requirements to facilitate the Southern Conference, and the resulting economic impact.
- Action will support improved visitor experience and increased revenue capabilities for the US Cellular Center by increased efficiency for Lobby, more efficient Box Office, and increased opportunities for promoter use of the renovated facility.
- Action leverages significant partnership funding to allow for greater levels of renovation.

Con:

None noted.

Funding already approved by the TDA and Buncombe County, along with Civic Center capital funds as outlined in the five-year Capital Improvement Program totals approximately $1.889 million as noted above. The total cost of Phase III renovations, including the design contract, will likely be between $2.1 and $2.5 million. A portion of the design costs for Phase III have already been budgeted and charged to the Phase II project budget. Staff will move those previously budgeted expenses and offsetting revenue from the Phase II project budget to the Phase III project budget. The construction period will run into the FY 2013-14 budget year, and currently staff anticipates approximately $700,000 in additional construction funding will be available for the project as of July 2013. In addition, staff and US Cellular Center Commission members continue to explore additional revenue sources.

City staff recommends City Council adopt a budget amendment in the amount of $1,889,518, to accept funding from various sources to establish a Capital Budget for Phase III of the renovations for the U.S. Cellular Center to meet requirements for the Southern Conference Basketball Tournament and other major events.

**ORDINANCE BOOK NO. 28 - PAGE 47**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Manheimer moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. ECONOMIC DEVELOPMENT COALITION UPDATE

Mayor Bellamy announced that this update will be rescheduled.

### B. DEVELOPMENT SERVICE DEPARTMENT UPDATE

Development Service Department Director Robert Griffin provided Council with information detailing how his Department is is committed to developing a culture of timeliness, accuracy, and consistency in processing, reviewing, and inspecting all projects, improving the customer experience, meeting code and ordinance requirements, and recognizing the economic benefit all applications bring to Asheville.

He then provided information on a change to the front of the City Hall Building. We anticipate this being done around March, 2013.

When Mayor Bellamy suggested that the handicapped access ramp be located on the other side of the front of City Hall, City Manager Jackson said that they will research it and report back to Council.

### C. WATER RESOURCES UPDATE

**RESOLUTION NO. 12-259 - RESOLUTION REAFFIRMING ASHEVILLE'S RETENTION OF ITS WATER SYSTEM**

Project Manager Phil Kleisler updated City Council on the Water Resources process update from November 27 - December 11, 2012. He reviewed with Council the proposal that the MSD Planning Committee received, briefly reviewed the City Council worksession held earlier in the day, reviewed some upcoming meetings, and presented City Council with a proposed resolution reaffirming Asheville's retention of its water system. He then provided Council with the information sharing between the City and MSD.

Councilman Smith moved for the adoption of Resolution No. 12-262, noting that (1) Council remains unanimously opposed to legislation that forces the transfer of the City of Asheville's municipal water system to another entity; (2) Council is committed to leading an effort to achieve cost savings for all stakeholders through shared services of regional utility providers; (3) Council remains convinced that local solution arrived at by an open, collaborative process is preferable to a legislative directed disposition of municipal assets; and (4) The forced taking of the local government infrastructure sets a dangerous precedent in the state of North Carolina, a

precedent that will have a chilling effect on any local government investing in needed infrastructure in the future, thereby endangering business opportunities and economic stability in the state and resulting in job losses for our citizens in Western North Carolina and across the state. This motion was seconded by Councilman Bothwell.

Mr. Barry Summers felt disappointed that the people who want to take our water system will not respect this resolution as seen by their continuing to draft the bill.

Councilman Bothwell noted that both the City's financial analysis of proposals on the table and the analysis by Raftelis demonstrated that if we proceed with the merger proposed by the State legislators that the City ratepayers are subsidizing sewer customers both in Buncombe County and in Henderson County. There are ways we can work with MSD to save money for both entities, but it is not through consolidation. The State is not just taking our water system, they are penalizing the ratepayers.

Mayor Bellamy stressed that this is a general law that can happen to any community in North Carolina.

The motion made by Councilman Smith and seconded by Councilman Bothwell carried unanimously.

**RESOLUTION BOOK NO. 35 - PAGE 145**

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS ASHEVILLE-BUNCOMBE TECHNICAL COMMUNITY COLLEGE ALLIED HEALTH & WORKFORCE DEVELOPMENT FACILITY LOCATED AT 240 VICTORIA ROAD TO DEVELOP AN APPROXIMATELY 185,421 SQUARE FOOT EDUCATION FACILITY**

**ORDINANCE NO. 4147 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS ASHEVILLE-BUNCOMBE TECHNICAL COMMUNITY COLLEGE ALLIED HEALTH & WORKFORCE DEVELOPMENT FACILITY LOCATED AT 240 VICTORIA ROAD TO DEVELOP AN APPROXIMATELY 185,421 SQUARE FOOT EDUCATION FACILITY**

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing. Mayor Bellamy also noted that she received a copy of the minutes of the neighborhood meeting but would base her decision solely on what is before Council.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:59 p.m.

Urban Planner Julia Fields entered into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Fields said that this is the consideration of the issuance of a conditional use permit for Asheville-Buncombe Technical Community College Allied Health & Workforce Development Facility located on 240 Victoria Road to develop an approximately 185,421 square foot education facility (Aerial Map - City Exhibit 4).

Ms. Fields said that the applicant, Asheville-Buncombe Technical Community College (AB Tech), is requesting conditional use approval of site plans to construct a new Allied Health and Workforce Development Facility (184,208 square feet) on their campus. As the proposed new facility has a gross floor area of more than 100,000 square feet, this project is being reviewed under the Level III review process (conditional use permit).

The project site, 13.13 acres, is located on PIN 9648.33-4217 and a portion of PIN 9648.33-7732. The small portion of the latter parcel is included so that all parking for the project will be on the same parcel and so that retaining walls will not cross property lines (building code requirement). The portion will be combined with the larger parcel to form one parcel prior to final project approval. The project site currently bears addresses of 240, 101, and 103 Victoria Road. It is the former site of the Saint Genevieve of the Pines School and has been owned and utilized as part of the AB Tech campus for a number of years. The property is zoned Institutional (Site Plan - City Exhibit 5).

AB Tech proposes to demolish all but one (Ivy Building – auditorium/chapel) of the existing structures located on the site to allow for the construction of a building to serve as the new Allied Health and Workforce Facility for the college. The 154,530 square feet of the structure that will be completed at this time will serve as a mixed use facility housing classrooms, laboratories, offices, the campus day care center, and an 832 seat auditorium. [A portion (9,584 square feet) of the fourth floor of the structure and the entire fifth floor (20,094 square feet) of the structure will not be finished at this time (Front Elevation - City Exhibit 6) These areas will be built as a shell with only the framework, corridors to stair towers, stairs, elevators and rough ins of toilet rooms constructed at this time. When the remainder of the building is completed, additional parking or a modification will be required]. The building will be seventy-one feet in height; five stories with a small lower level on a portion of the western side of the structure (location of the child care facility). The building is being designed to be LEED certified.

Approximately 11.9 acres of the site will be graded in preparation for the construction of the facility and accompanying parking. Approximately 10.1 acres will be impervious at completion. The phasing of the project has been designed to allow the existing child care center (which is in a building slated for demolition) to continue to operate until a temporary certificate of occupancy is issued for the new building. At that time the remaining site work will be completed.

Access to the site is (and will remain) via Victoria Road where the two existing access points/drives will be improved. A traffic impact study has been completed and the

recommendations of the study and the City's Traffic Engineer have been adopted in the proposed plans. Five hundred and fifty-eight parking spaces are provided on site; the minimum required by the City is 546. Pedestrian access to Victoria will be afforded in the center of the site with minimal conflicts between pedestrian and vehicular traffic. Sidewalks will be provided along Victoria. A bus shelter will also be provided on Victoria. (Site Plan - City Exhibit 5)

Landscaping required for this project includes building impact landscaping, street trees, street buffer, Type A and B buffers, and vehicular use area landscaping. Fifteen percent of the site is required to be set aside for open space. The plans indicate more than the required amount of open space.

This project was reviewed and approved with conditions by the Technical Review Committee on October 1, 2012. Many of the comments made in the TRC report have been or are being addressed by the development team working closely with City staff.

A meeting with residents of the Livingston Heights community was scheduled for December 5, 2012, to review the project with them. Mr. David Nash, Chief Operations Officer for the Asheville Housing Authority will present their summary of the meeting.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
The project will meet all requirements of the North Carolina Building Code and the City of Asheville and will be reviewed in detail by the North Carolina Department of Insurance and the City of Asheville's Technical Review Committee to ensure compliance with safety requirements.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
As most of the site is already developed with buildings and parking facilities and the site is in an area heavily developed with institutional uses, there are few significant natural features on the site or in the area to be protected. The site is in a very prominent setting elevation-wise which has been taken into consideration in the design. Most of the pine trees that line Victoria Road will be lost due to the development; however, the planting plans propose that a number of pines will be newly planted in respect for the history of the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The parcels in the area surrounding the site are largely occupied by other institutional uses and the site itself has been used for years for educational purposes. Where the project site abuts multi-family or single –family properties, landscape buffering will be provided. The new Allied Health and Workforce Development Facility is expected to be a complimentary use and should not injure the value of adjoining or abutting properties.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The Allied Health and Workforce Development Facility is proposed to be five stories in height. While this is larger than the educational buildings currently located on the site it is

in keeping with other institutional buildings in the vicinity. Significant vegetation will be provided on the site and open space exceeds that required by the City. The development is compatible with the scale, bulk, coverage and character of the other institutional uses in the area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
This project supports the comprehensive plan stated goal of "the City working with Asheville-Buncombe Technical Community College to address the needs of the college as it expands". Additionally, the project is proposed to be LEED certified which aligns with greenbuilding and smart growth focuses found in both the comprehensive plan and the City Council's Strategic Operating Plan.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The proposed project is located on a roadway that serves major institutional uses at present and is served by the S4 transit route. The project has been reviewed by the Technical Review Committee who found that existing infrastructure appears to be adequate and the preliminary review has not revealed any problems for future service to the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The development plans for this project along with the accompanying traffic impact analysis have been reviewed by the City's Traffic Engineer. Several suggested revisions to the originally submitted plans have been made to improve both vehicular and pedestrian traffic.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

The project was reviewed by the Planning and Zoning Commission on November 7, 2012, who unanimously (6-0; Chairman Cannady recused) recommended approval of this application to the Asheville City Council. No one spoke on this matter except members of the development team.

Pros:

- The proposal satisfies an important City goal found in the comprehensive plan of advancing and maintaining the City's role as Western North Carolina's regional education center.
- The applicant will be seeking LEED certification, meeting key "green building" goals of the City.
- The project will provide a much needed state of the art facility for the Asheville-Buncombe Technical Community College on property currently underutilized by the college.
- The historic chapel/auditorium located on the site will be preserved.

Con:

- The building is significantly larger than the existing buildings on the site which may be seen as a negative by some adjoining residents.

Staff recommends approval of the Level III development proposal for the Allied Health and Workforce Development Facility for AB Tech and issuance of a conditional use permit for this facility.

The project was reviewed by the Planning and Zoning Commission on November 7, 2012, who unanimously (6-0; Chairman Cannady recused) recommended approval of this application to the Asheville City Council.

Mr. Scott Donald, architect representing the owner, explained the different floors of the five story facility. As the building rises to the 4th and 5th floors, it will have smaller footprints. Using schematic drawings, he showed the building prospective (Applicant Exhibit 1). He said that they have paid close attention to the massing of the roof and terracing, which will be potential for green roofs. Showing a view from the Wall Street Parking Deck (Applicant Exhibit 2), Mr. Donald said that the elevation they are starting out is 2204 and Mission Hospitals ground floor is approximately 2196. Showing a view from McDowell Street toward the new building (Applicant Exhibit 3) he explained how the building is a much needed project for AB Tech. They showed a picture of what the building impact will look like from the backyard of Livingston Street Apartments (Site Plan - City Exhibit 3; Applicant Exhibit 4). In that rendering, it showed landscape buffers and the site line views, noting that this is a winter view with only a thin line of single row trees that separates the two properties now. There will be several layers of buffering to help mask the building from them. They will also be paying close attention to light pollution and keep the lighting on their property.

Mr. David Nash, Chief Operations Officer for the Housing Authority, briefly outlined the comments made at the neighborhood meeting with the developers. Even though the building is very attractive, based on its scale and location it will be quite prominent above the neighborhood. They do support the development but requested the following: (1) the existing storm water runoff needs to be fully resolved to stop the erosion problems and they are confident that the project engineers will take into account both the current inadequacy of that storm water control system and the increased storm water that will come from this new development; (2) AB Tech consult with residents on Erskine Street about constructing an intentional pedestrian link between this new campus and Erskine Street (at this time he was not sure if the residents would like a bike path or some other formal access); (3) AB Tech include a job training component in the construction of this new facility for participants in the Green Opportunities training programs and other qualified residents of the neighborhood; and (4) AB Tech provide preferential access for our residents who are students at AB Tech to the child care center that will be located in the new building.

Mr. DeWayne Barton, representing Green Opportunities, spoke about how important it is when there is a development like this in the community to include the community. It is good for community members to see them work on their neighborhood. He hoped they can work this out so it benefits everyone.

After rebuttal, Mayor Bellamy closed the public hearing at 6:18 p.m.

When Mayor Bellamy asked about the plan to address the storm water concerns, Mr. Donald said they are looking at the existing infrastructure that goes beyond the site and onto Victoria Road. They have agreed with the neighborhood that the existing basin will be brought up to standards and they will also follow all the City's regulations regarding storm water control.

When Mayor Bellamy asked if a condition needed to be placed on the permit to make sure all storm water issues are addressed, City Attorney Oast said that some, if not all, of the issues will be addressed with this plan. He noted that the TRC recommendations will be included as part of the ordinance.

Mayor Bellamy felt the required buffer between the back of the new building and the Livingston Street Apartments is inadequate and needs to be widened with perhaps evergreens. Mr. Donald said that they can exceed the landscaping standards and agreed to widen the buffer.

Mayor Bellamy asked that the developer continue to talk to the neighborhood (1) about the transition of the existing informal path between the new building and Erskine Street; (2) opportunities for local participation not only in constructions jobs but educational opportunities; and (3) light spilling into the neighborhood. Mr. Donald said that they have agreed to have quarterly meetings with the neighborhood over this three-year project and regarding local participation, they already are using local labor and materials.

Councilman Hunt was concerned that there might be too limited an inclusion of bicycle facilities. The 5% rule for bike racks, which seems to equate to 28 total, seems tiny compared to the potential demand given the populations served. The City had Mission Hospitals include bike lanes on the nearby Mission campus with their recent changes, and this seems like a chance to include more infrastructure as well to connect the areas. After a brief discussion about the width of the road and whether it can be striped for bike lanes, Councilman Hunt asked that City staff and the developer make their best effort to distinguish bike lanes, with possibly share arrows.

In response to Councilman Hunt, City Traffic Engineer Jeff Moore said that there are no plans to reconfigure Victoria Road. He said that this project is well thought out to handle the traffic.

There was a brief discussion, initiative by Councilman Smith, regarding a bus shelter on both sides of the road; however, Transportation Director Ken Putnam used a transit map (City Exhibit 7) to show that through this stretch the bus only goes in one direction.

In response to Mr. Pelly, Mr. Joe Bace, AB Tech Facilities Director, said that they update their Master Plan every five years.

Councilman Bothwell found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4147, granting a conditional use permit adopted the proposed plan for the Asheville-Buncombe Technical Community College Allied Health & Workforce Development Facility located on 240 Victoria Road to develop an approximately 185,421 square foot education facility, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10 of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with this ordinance, will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (6) The landscape buffer between the building and Livingston Street apartments be widened. This motion was seconded by Councilman Davis and carried unanimously.

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**B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE APPROVED CONDITIONAL USE PERMIT FOR THOMS ESTATE SUBDIVISION LOCATED OFF OF FRENCH WILLOW DRIVE AND BOUNDED BY WILD CHERRY ROAD, BEAVERDAM ROAD AND ELK MOUNTAIN SCENIC HIGHWAY, TO ALLOW CHANGES TO COMMON AREA AMENITIES, SECONDARY FIRE DEPARTMENT ACCESS AND A VARIETY OF ARCHITECTURAL DESIGNS FOR SINGLE FAMILY RESIDENCES**

Due to notice requirements, this public hearing will need to be pulled and rescheduled.

C. **PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO UPDATE OUTDOOR LIGHTING STANDARDS**

**ORDINANCE NO. 4148 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO UPDATE OUTDOOR LIGHTING STANDARDS**

Assistant Planning & Development Director Shannon Tuch said that this was the consideration of an ordinance to amend the Unified Development Ordinance to update the existing standards regulating outdoor lighting. This public hearing was advertised on September 14 and 21, 2012. On September 25, 2012, the public hearing was continued to November 27, 2012. On November 27, the public hearing was continued to this date.

The City of Asheville has had standards regulating outdoor lighting since 1998. More recently in 2008, there was a comprehensive update to those standards and as part of this update, the standards were moved from the *Standards and Specifications Manual* to the UDO where it would be easier for the public to find and reference the necessary standard. This also allowed the various technical departments to share in the review and enforcement of these standards where, at present, outdoor lighting is reviewed by the Department of Public Works (street lights), Building Safety (building lights) and Planning and Development (site lighting).

In 2011, the Department of Public Works in support of the sustainability master plan, announced a multi-year plan to phase in new LED street lights. In order to support this change, a wording amendment would be required to ensure that all new privately installed street lights would match the city's new LED street lighting standards. Since an amendment was required, staff took the opportunity to review all the current standards and see if there were other areas where updates, either for energy efficiency or for other reasons, were warranted and this effort was supported by the Sustainability Advisory Committee on Energy and the Environment (SACEE). A small work group composed primarily of staff from the three technical departments responsible for administering the standards, along with various outside stakeholders that included a neighborhood representative, Progress Energy staff, and the manufacturing industry representatives communicated through meetings and e-mails in order to develop accurate and efficient standards. With a couple exceptions (noted below), the changes are not generally considered substantive and are primarily clarifications and re-organization designed to clarify and expand options for developers and to improve the review process. The primary changes are summarized as follows:

1. **Reorganization of content**. Because the ordinance is reviewed and administered by three separate technical disciplines within the City, re-organizing the content of the ordinance helped clarify who was responsible for which standard. It also helped establish general standards applicable to all lighting, versus those standards that were specific to each discipline.

2. Eliminate standards and language no longer needed as a result of the most recent update to the **NC State Energy Code**.

3. **New definitions** section (b) for:
   - LED Bug rating system
   - Low luminosity lighting – 1,000 lumens or less
   - Low level decorative lighting – 60 lumens or less
   - Very low luminosity lighting – 15 lumens or less
   - Low voltage lighting
   - Other basic terms: Lamp, fully shielded, Seasonal lighting, etc.

Establishing new definitions allowed additional exemptions to be proposed.

4. All new **floodlights** are now banned in the CoA as noted in the definitions and *Prohibitions* section (f). There was some deliberation at the workgroup and SACEE meeting on whether to prohibit any additional floodlights or to go a step further and prohibit and amortize flood lights (similar to unshielded dusk-to-dawn lights). The recommendation to prohibit and amortize leased utility lights are reflected in the draft ordinance with Progress Energy's support. This would not extend to privately owned flood lights which would be grandfathered.

5. There is now an exception in section (i)(4) for **wall mounted fixtures** that use low luminosity lighting (1,000 lumens or less), provided a translucent lens is used that covers the light source. This provides greater a greater range of fixture options.

6. Some more offensive building lighting are now prohibited in section (f)(8). This includes:
   - **Building accent luminous tubes** (LED, neon, fluorescent or other similar technology) in are now required to be shielded, and the exception for trademark structure is now removed.
   - Lighting of an **angled building surface** (i.e., roof pitch) is now prohibited.
   - **Illuminated wall panels**, which had always been prohibited under the sign code, are now also identified as prohibited in the lighting ordinance.

7. Clarify that all lighting, as a general rule, shall be full cutoff and aimed downward, Section (g)(1). Individual exceptions are provided for elsewhere.

8. New **LED standards** were incorporated in section (g)(8).
   - 4,300 Kelvin degree maximum CCT (correlated color temperature) rating to minimize glare.
   - Maximum lumens will be 6,000 in residential districts and 15,000 in commercial districts.
   - Street light BUG ratings shall be no higher than (1-1-1) in residential districts and (3-3-3) in commercial districts.
   - Area light BUG ratings shall be no higher than (3-0-1) for standard area lights and no higher than (3-1-1) for decorative area lights.
   - Building lights are restricted to a rating of (0-0-0)

9. **Lighting of alleys** in section (h)(4)(a)(v) must now use full cutoff design, unless otherwise excepted.

10. **Street lighting** in section (h)(5) sets **lumens** to match LED standards: no greater than 6,000 in residential neighborhoods and no greater than 15,000 in commercial districts. Exceptions are included at intersections where higher light levels are needed. The City standard light must be used.

11. **Street lighting in historic districts** [Section (i)(4)(f)(ii)] may no longer use "non-cutoff" fixtures, but cutoff and semi-cutoff fixtures are still allowed when the historic guidelines require it.

12. An exception for **cutoff post-mounted decorative lights** is removed. Recommended by SACEE, a previous exception to the full cutoff requirement allows a cutoff light no taller than 18-feet and no greater than 9500 lumens to be used.

13. There is now an exception in section (i)(4) for **wall mounted fixtures** that use low luminosity lighting (1,000 lumens or less), provided a translucent lens is used that covers the light source. This provides greater a greater range of fixture options.

14. In an effort to follow the intent of limiting light escape from **daylighted** features, a requirement for glazing (typically used already) and a prohibition to uplight the skylight well were added. It was also clarified that these standards are intended for commercial applications so one and two-family dwellings have been exempted.

This amendment was shared and discussed at the regular Council of Independent Business Owners (CIBO) meeting held on July 13, 2012, where several questions regarding the extent of the changes to the standards were answered. No requests for changes were made.

This amendment was reviewed by SACEE at their May 16, 2012 and again at their November 28, 2012, meeting where the draft changes were supported and recommended to the Planning & Zoning Commission for consideration.

The ordinance was reviewed by the Planning & Zoning Commission at different stages of its development and was finally reviewed and approved at their September 5, 2012, meeting where there was moderate discussion and debate regarding the options for LED area lights. Ultimately, the Commission voted to approve the amendment unanimously (6-0) with the stricter BUG rating standard. Additionally, some members of the Commission also expressed interest and support for strengthening the standard for non LED post-top decorative lights and wanted to encourage consideration of a full cut-off requirement to match Buncombe County's requirement. Support for this was not unanimous and no formal motion was made.

Although the draft ordinance was supported by the Commission, staff decided to hold off on moving the draft to Council when additional opportunities for improvement were identified by city staff in the Building Safety Department. Additional time was taken to review the suggestions and incorporate additional edits. The latest set of changes may not have legally required re-review by the Commission but to ensure that the Commission would be fully aware of all the changes it was decided that the latest draft would return to the Planning & Zoning Commission for a second review at their December 5, 2012, meeting. The most substantial change was to incorporate the recommendation from SACEE to eliminate the cutoff option for non-LED post-top decorative fixtures. At the Planning & Zoning Commission's December 5, 2012, meeting they adopted the draft ordinance unanimously.

This proposal primarily supports the City Council Strategic Operating Plan goal for "Green & Sustainable" and "Safe" with its promotion of energy efficient light fixtures and other standards that better control uplighting, glare, night blindness, and shadows.

Pros:

- Clarifies standards and options for developers and property owners.
- Provides new flexibility and low impact options for owners and designers – reduces the number of existing non-conformities.
- Encourages the use of energy efficient fixtures.
- Limits or discourages unsafe glare.

Cons:

- Will require the removal and/or replacement of utility leased flood lights non-conforming over time when complaints are received.
- Will render some existing lighting designs non-conforming, although it is thought to a small number of isolated cases.

No direct fiscal impact on the ordinance amendment itself. The switch to LED streetlights will have a long-term fiscal benefit to the City through reduced energy costs.

Recommend approval of the proposed wording amendment and find that it is consistent with City adopted plans and goals.

Mayor Bellamy opened the public hearing at 7:38 p.m.

Mr. Dane Barrager, representing the Sustainable Advisory Committee on Energy & the Environment, supported the ordinance because it encourages LED and other more efficient forms of lighting, reduces light pollution, and it conforms with the County's ordinance.

Mayor Bellamy closed the public hearing at 7:40 p.m.

When Councilman Bothwell asked what the standard proof is for trademark lighting, Ms. Tuch said that staff asks for documentation.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Bothwell found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4148, This motion was seconded by Councilman Hunt and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 54**

**V. UNFINISHED BUSINESS:**

**A. CONTINUATION OF CONSIDERATION OF OPEN SPACE REQUIREMENTS FOR WELLINGTON ESTATES CONDITIONAL ZONING**

City Attorney Oast said that at the City Council meeting on November 27, Council held a public hearing on the request for conditional zoning for 42 Airport Road, also known as the Wellington Estates Mobile Home Park. The owner/applicant had ceased the mobile home use of the front portion of the property near Airport Road (13.65 acres), and it had been rezoned to Highway Business (HB) at the owner's request. The owner now seeks to reestablish the mobile home use, and is pursuing a conditional zoning to RM16, with a manufactured home overlay, in order to approximate the previous density.

Because it is considered a new development, the City's development standards would ordinarily apply. This includes the requirement that open space be provided, in accordance with 7-11-4 of the City Code. The open space must be publicly accessible, or available to the residents of the development, but may include such things as wetlands, flood plains, steep slope property, and land which is otherwise not suitable for development. The amount required is 500 sq. ft. per unit, not to exceed 10 percent of the development acreage. In this case, that amount is 1.365 acres. The code contains a "fee in lieu of" provision, which allows for a fee equal to the value of the land (computed on a *pro rata* formula) to be paid into a fund for use by the City for recreation/open space in the area near the development. Because the Wellington Estates site was already developed, the owner would have found it difficult to reconfigure it to provide the required open space, so City staff recommended payment of a fee in lieu.

At the Council meeting, some members of Council inquired whether the fee could be waived. The reasoning was that the property was being developed with a form of affordable housing, it is not as dense as the code would allow, and there are a significant number of mature trees on site that the applicant does not propose to remove. Stated another way, the question is not whether the fee in lieu of could be waived, but whether the new/re-established development would be required to comply with the open space ordinance, of which the fee in lieu alternative is a part.

Under the conditional zoning ordinance, City Code Sec. 7-7-8, the same standards and requirements for the corresponding general use district (in this case, RM16) apply within a conditional zoning district, unless modified by the Planning Director (up to a specified threshold) or by the City Council (beyond that threshold). This encompasses a modification that would make compliance with certain code requirements unnecessary. Thus, it appears in this case that Council may modify the open space ordinance as it applies to this property so that compliance with the ordinance is not required, thereby dispensing with the need for the fee in lieu.

If Council decides to modify the requirement in this case, the reasons for doing so should be stated. To the extent that the modification is based on the applicant's representations that existing trees on site will be preserved, it is recommended that a condition be attached to the modification. Such a condition could be the preparation of a tree preservation plan that incorporates some of the requirements from the City's ordinance.

Councilman Davis didn't run the risk of setting a precedent; however, this is reusing affordable property that has mature trees. We should be encouraging this type of adaptive reuse.

Councilman Davis moved to (1) condition the modification that the preparation of a tree preservation plan that incorporates some of the requirements from the City's ordinance; and (2) modify the open space ordinance as it applies to this property so that compliance with the ordinance is not required, thereby dispensing with the need for the fee in lieu, for the stated reasons: (a) the property was being developed with a form of affordable housing, it is not as dense as the code would allow; and (b) there are a significant number of mature trees on site that the applicant does not propose to remove. This motion was seconded by Councilman Bothwell and failed on a 3-4 vote, with Mayor Bellamy, Councilman Bothwell and Councilman Davis voting "yes" and Vice-Mayor Manheimer, Councilman Hunt, Councilman Pelly and Councilman Smith voting "no".

Mayor Bellamy felt we are penalizing someone for bringing back affordable housing and the preservation of mature trees.

Planning & Development Director Judy Daniel confirmed that the developer needs to pay a fee in lieu for deficient open space.

From the audience, Mr. Morosani said that he would leave the mature trees and pay the $50,000 fee in lieu.

At 7:00 p.m., Mayor Bellamy announced a 20-minute recess.

**B. CONSIDERATION OF AN ORDINANCE AMENDING THE BILTMORE PARK TOWN CENTER SIGNAGE PLAN FOR RETAIL TENANT IDENTIFICATION SIGNAGE**

At the petitioner's request, Councilman Hunt moved to continue this matter until February 12, 2012. This motion was seconded by Councilman Bothwell and carried unanimously.

**C. CONFIRMATION OF PERMANENT BOARD OF DIRECTORS FOR THE MUNICIPAL SERVICE DISTRICT FOR DOWNTOWN**

Councilman Hunt said that the BID nominating committee has completed its application review process and is recommending a slate of initial permanent board members for City Council consideration.

At the October 9, 2012, formal meeting, City Council adopted a resolution creating a downtown Municipal Service District, also known as a Business Improvement District, in downtown Asheville. The resolution states "that a permanent board of directors for the BID be

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appointed no later than December 15, 2012." The resolution does not state how the initial permanent board of directors would come into being and therefore, Council suggested creation of a nominating committee of two City Council members and three interim Board members and the five of those appoint two additional people to bring a recommended slate of initial permanent board members to the City Council.

In addition to Jan Davis and Marc Hunt, the nominating committee consisted of Kim MacQueen, George Saenger, Lou Bissette, and Adrian Vassallo. The application process was advertised and a total of 29 applications from well-qualified candidates were received by the nominating committee through November 16, to ensure consideration. The committee was pleased with applicant response, which made the recommendation process extremely competitive and difficult to narrow down. The application and selection process emphasized diverse representation of the downtown business district to include: major real estate property owner within the BID area (property above $10 million tax value), small/medium real estate property owner within the BID area (property under $10 million tax value), resident living within the BID area, office tenant operating within the BID area, and owner or operator of a retail business or restaurant within the BID area.

The recommended slate of initial permanent board members are:

- John Monroe, Southern Development of NC
- John McKibbon, Aloft Hotel
- David Brown, D.L.B Properties
- Rick Jackson, McGuire, Wood & Bissette
- Jim Samsel, Samsel Architects
- Karen Tessier, Market Connections
- Susan Griffin, downtown resident
- Kim MacQueen, downtown resident
- Mary Robinson, Roberts & Stevens, P.A.
- Ruth Summers, Grove Arcade Foundation
- Michel Baudoin, Bouchon & Creperie Bouchon
- Franzie Charen, Hip Replacements, Asheville Grown Business Alliance
- Stephanie Swepson-Twitty, Eagle Market Street Development Corporation
- Dwight Butner, Vincenzos Restaurant

In addition to the recommended slate of board members, the Asheville City Council shall appoint one board member as an ex-officio voting member of the board, as shall the Buncombe County Commissioners and Asheville Downtown Association. Once these appointments are made, this will bring the total board number to 17.

City Council's resolution to create a BID did not include funding for the current fiscal year. Consideration for funding and options for dedicated revenue streams will be discussed during the upcoming FY 13-14 budget process. City Council is authorized to enter into contract with the entity that is formed (Asheville Downtown Inc.) and would consider the list of proposed services to be provided and projected budget necessary to provide those services prior to July 1, 2013.

This action complies with City Council's Strategic Operating Plan in the goal of Fiscal Responsibility - The City of Asheville will support a stronger more prosperous community by making smart investments that accomplish lasting, tangible returns; Goal 2: Explore alternatives for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities; Objective 4: Seek efficiencies in master plan implementation by identifying plan interdependencies, funding sources and key partnerships.

Per Council's October 9 direction, the nominating committee submits this slate of candidates for favorable consideration for the initial permanent BID board.

Councilman Hunt moved to confirm the recommended slate of initial permanent Board of Director members for the municipal service district for downtown. This motion was seconded by Councilman Davis.

Councilman Smith felt that this type of entity needs to be sensitive to the needs of the homeless downtown. Because of that, he offered a friendly amendment to add two more seats for homelessness system experts. These people would be those that work with downtown homeless populations and who understand the services that are available as well as the conditions that lead people to come into homelessness in the first place. He suggested that the two additional members be drawn from the existing members on the Homeless Initiative Advisory Committee (HIAC). He suggested a schedule that applicants apply by January 8 and those appointments be made on January 22.

Councilman Hunt and Councilman Davis accepted the friendly amendment.

When Councilman Hunt asked if it would be acceptable for the Nominating Committee meet once those applicants are advanced so they can work with them, Councilman Smith thought that was a good idea. Councilman Smith said that the HIAC doesn't meet again until January 14, and it may not be timely to ask them to do the nomination, but as liaison to the HIAC he would be happy to reach out to Chairman David Nash and the membership to solicit names of those who might be interested to be involved.

Councilman Hunt felt that since this will be forming over months, he felt it might be better not to rush the process due to the holidays and wait until February 15. Councilman Smith said that he was trying to get the two new members seated before the first permanent BID Board meeting.

Mayor Bellamy agreed for two service providers on the Board, but didn't see the need for us to appoint from the existing HIAC membership because there is very little racial diversity on the HIAC. She personally supported Michael Woods from the Western Carolina Rescue Ministries.

In response to Councilman Bothwell, Councilman Hunt said the outreach for applicants was strong.

When Councilman Bothwell noted there is no faith organizations represented and the fact that there are several churches in the downtown area, Councilman Davis noted that the Board can't represent every group in Asheville and with a board this large he anticipated vacancies at which time a member from that group could be appointed. Councilman Hunt also noted that Council will have the authority to appoint 1/3 members of the replacement board members and the details of which seats those will be will be worked out in the by-laws.

Ms. Kim MacQueen, member of the Nominating Committee, the Interim BID Board and the initial BID Committee, said that their original program was a clean, green and safe, however, since October the program was geared more toward clean and green oriented with the thought that the safety part be delayed for at least 2-3 years. After talking to BID boards across the state, they operate very strongly with small break-out committees. She sees this board operating with very active working break-out committees. She asked that a single slot be made available for a homelessness system expert, similar to the Downtown Association seat, and then allow as many people as want to work on specific issues to work on the break-out committees.

Mr. Timothy Sadler felt that Rev. Amy Cantrell, Co-Founder of Be Loved Community, would be an excellent asset to the BID Board.

The amended motion made by Councilman Hunt and seconded by Councilman Davis to confirm the recommended slate of initial permanent Board of Director members for the municipal service district for downtown, with the addition of two seats for homelessness system experts carried unanimously.

Councilman Hunt moved to appoint Councilman Davis as the City Council ex-officio voting member of the municipal service district for downtown. This motion was seconded by Councilman Pelly and carried unanimously.

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 12-258 - RESOLUTION SUPPORTING THE RIVER ARTS DISTRICT TRANSPORTATION IMPROVEMENT PROJECT (RADTIP)**

Transportation Planner Dan Baechtold said that this is the consideration of a resolution of support for the road, sidewalk, parking and greenway improvements of the River Arts District Transportation Improvement Project.

The City of Asheville has been engaged in a two-year process to study a portion of the Wilma Dykeman Riverway Plan that has come to be known as the RADTIP (River Arts District Transportation Improvement Project). The RADTIP will construct roadway improvements, sidewalks, bike lanes and greenways along Lyman Street and part of Riverside Drive. The project implements a portion of the Wilma Dykeman Riverway Plan.

This process, which included extensive input from stakeholders and the public, has identified a preferred alignment and preliminary design for the RADTIP. This alignment was presented to the City Council at a joint work session with the Asheville Area Riverfront Redevelopment Commission on November 13, 2012. The design and the results of the study were also presented to the public at an open house on December 6, 2012.

At the November 13th work session, City Council asked staff to re-introduce this item at a regularly scheduled council meeting for formal action. This resolution indicates support by the City of Asheville for the RADTIP project and the preferred alignment.

The project includes upgrades to the roadway, including straightening the sharp curve on Lyman Street, and the addition of stormwater infrastructure, bicycle lanes, sidewalks, on-street parking, greenway multi-use trails, street trees and other amenities.

This project supports the City of Asheville's Strategic Operating Plan under the goals of Multi-Modal Transportation and Job Growth and Community Development. In addition the project supports implementation of numerous master plans including the Wilma Dykeman Riverway Plan, Sustainable Economic Development Plan, Greenway Master Plan, and the 2025 City Development Plan.

Pros:

- The project has received widespread public support.
- All of the options and impacts of the road alignment have been thoroughly studied.
- This project supports key strategic goals of the city.

Con:

- Implementation of the RADTIP will require additional funding and a multi-year investment.

This action does not have an immediate fiscal impact. The resolution does not commit the city to any future expenditures, but it does express support for a multi-million dollar, multi-year capital investment.

City staff recommends that City Council adopt a resolution in support of the River Arts District Transportation Improvement Project.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 12-258. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 - PAGE 144**

**B. ORDINANCE NO. 4149 - FIRST READING OF ORDINANCE GRANTING A FRANCHISE AGREEMENT FOR THE OPERATION OF A TROLLEY BIKE TOUR SERVICE (PUB CYCLE) WITHIN THE CITY OF ASHEVILLE**

Director of Transportation Ken Putnam said that this is the consideration of an ordinance granting a franchise agreement for the operation of a trolley bike tour service (pub cycle) within the City of Asheville.

City staff has been working with a citizen that is interested in starting a trolley bike tour service (pub cycle) within the City of Asheville under the business name of Peech Development, Inc., dba Amazing Pubcycle. Initially, the service would only be allowed in the Central Business District (CBD) and only on city-maintained streets and approved state-maintained streets that have a posted speed limit less than 35 mph. It is the responsibility of the citizen to confirm with the N.C. Dept. of Transportation (NCDOT) that the vehicle can be operated along state-maintained streets within the CBD.

By definition, a trolley bike or party bike, pedibus, cycle pub, beer bike is a multi-passenger human powered vehicle. It is sometimes mistaken for a larger scale pedi-cab, but it is not since it is powered by the passengers while the steering and braking is controlled by a driver who does not provide pedaling power. The vehicle that will be used for this specific business is a pedal-assisted motorized electric vehicle that is licensed with the North Carolina Division of Motor Vehicles as a slow moving vehicle. The vehicle travels at about 6 to 8 mph and has the ability to travel at 25 mph.

The business model includes several themed tours for customers to choose including, but not limited to, a morning spin class, a progressive dinner tour, a brewer-man tour, corporate events, singles mixers, and various fundraisers. The tours would follow specific routes that have been pre-approved by the Transportation Department. Initially, the hours of operation would be between 1:00 pm and 3:00 am Monday through Friday and no restrictions on Saturday, Sunday, and City Holidays. The City reserves the right to change the hours of operation at its sole discretion with a 30-day notice.

The citizen has worked closely with several City departments including the Planning Department, the Transportation Department, the Legal Department, the Asheville Police Department, and the Economic Development Department and at this time, all concerns have been addressed. The citizen is very committed for the business model to be successful and he intends to work closely with staff to make any necessary tweaks during the first year of operation.

The Downtown Commission gave general support for the concept of a trolley bike tour service at their meeting on November 9, 2012. They suggested that the citizen contact the Chamber of Commerce as to the feasibility of using the Chamber as its beginning and ending points since ample off-street parking is available.

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This action complies with the City Council's Strategic Operating Plan in the Job Growth and Community Development Area by supporting diversified job growth and business development.

This item has been reviewed by the Council's Public Safety Committee and it received the Committee's endorsement on November 26, 2012. The Public Safety Committee agreed with staff to limit the number of franchise agreements to one for the first year so that the possible impacts to existing traffic flow can be analyzed by the Asheville Police Department and the Transportation Department.

Pros:

- Supports diversified job growth and business development.
- Enhances the visitor experience to downtown Asheville.
- No direct fiscal impact to the City.

Cons:

- Could impact vehicular traffic flow.

There is no known fiscal impact for the subject franchise agreement.

Staff recommends that City Council approve an ordinance granting a franchise agreement to Asheville Bike Taxi, LLC for the operation of a trolley bike tour service (pub cycle) within the City of Asheville.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith moved for the adoption of Ordinance No. 4149 on its first reading. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 72**

**C. RESOLUTION APPROVING REDUCTION OF A COMMUNITY DEVELOPMENT BLOCK GRANT LOAN PAYOFF FOR 64 PINE GROVE AVENUE**

Community Development Analyst Randy Stallings said that this is the consideration of a resolution to settle a Community Development Block Grant rehab loan on 64 Pine Grove Avenue for less than the amount owed.

The City provided a $12,000 amortized and a $27,669.81 deferred CDBG rehabilitation loan to Mary J. Foster in February 2006. Upon the death of Ms. Foster in December 2011, a balance of $8,667.09 remained on the amortized loan. The deferred portion of the loan becomes due and payable only upon sale of the property or a transfer in ownership. The outstanding balance owed to the City at the present time is $36,336.90. Additionally, HomeTrust Bank holds two senior notes totaling $22,810. Total outstanding liens on the property are $59,147.

Ms. Foster's son is the Administrator of the Estate and desires to keep the home in the family by selling same to his niece for $60,000. The 2006 tax assessed value is $95,900. An August 2012 appraisal reflects an "as is" value of $89,000. The appraiser noted that the exterior paint is peeling and Mr. Foster has stated that roof repairs are needed.

The Estate submitted a written offer to settle the account for $15,000, which HCD Committee rejected with a counter offer of $27,252.68. The $27,252.68 counter-offer represents 75% of the outstanding principal balance owed to the City. This amount, if approved by City Council and accepted by the borrower, would represent a satisfaction of both the amortized and deferred portions of the note.

This action meets the Council's Strategic Goals of Affordable, Job Growth and Community Development, as funds received from rehab loan payments are returned to the CDBG pool for future allocation to projects meeting these goals and relevant objectives.

Pros:

- The proposed action will enable the City to immediately recover $27,252.68 for reinvestment in CDBG eligible activities.
- Approval would allow the estate to sell the property free of liens and encumbrances.

Cons:

- Forgiveness of debt could create a precedent for future requests of a similar nature.
- Home is being sold in a non-arms-length transaction substantially below market value.
- No assurance can be provided that the home will not be sold for a significant profit once the City lien has been released.
- Requires the City to forgive $9,084.22 in loan principal, representing a loss of taxpayer funds.

Approval of this request and payment of the approved settlement amount by the estate would return $27,252.68 to the City for reallocation to CDBG eligible activities. If this request is declined or not accepted, the repayment to the City will remain due and payable under the original loan terms.

The Housing and Community Development Committee recommends a reduction of the outstanding balance on the loan from $36,336.90 to $27,252.68 as payment in full, subject to receipt of payment by the City by January 21, 2013, or any approved extension thereof as set forth in the resolution.

Councilman Pelly was concerned about setting a precedent in reducing the loan especially since there is no demonstrated financial hardship and there is significant equity above and beyond what is owed on the house. He would have to vote against this action.

Councilman Hunt was also troubled with setting a precedent because it does seem that there is capacity to fully repay the loan. Therefore, he moved to recover all of the balance and that we do so by requiring $20,000 immediately and finance the residual balance due on both loans combined over 10 years at whatever the prevailing Affordable Housing Trust Fund interest rates that we normally charge.

In response to Vice-Mayor Manheimer, Community Development Director Jeff Staudinger said that there is no policy relative to forgiveness of old CDBG loans. Generally speaking the practice has been that those loans are repaid in full. We have deferred many of those loan packages and since he has worked for the City, none have been forgiven.

In response to Vice-Mayor Manheimer, Mr. Staudinger said that affordability for the household was determined at the time the loan was made. If the household could afford a monthly payment, a monthly payment was agreed to, but the amount necessary to do the necessary repairs if a portion could not be afforded by the household) wasn't seen as an impediment to doing the work and that portion was deferred until the sale or transfer of the property. For this loan, a portion of the loan was a performing loan and a portion of the loan was deferred.

Mr. Staudinger said that there may be a way to do Councilman Hunt's proposal but it cannot be done with CDBG funds less there is an income qualified person living in the house. The family has not provided evidence that an income qualified person would continue to live in the house. In that case, since CDBG funds must always show benefit to low and moderate income persons, that portion of the loan cannot be further deferred with CDBG funds. One option could be that we could look at local funds replacing some of those CDBG funds. This has not been discussed at the Housing & Community Development Committee.

In response to Vice-Mayor Manheimer, Mr. Staudinger said that the death of Ms. Foster triggers repayment due and the need to make arrangements for that deferred portion. We don't press that to happen, but often times this results in a transfer of the property. When the property is transferred and the closing happens in advance and we learn that is happening, then we have to take the action to recover the CDBG funds.

In response to Vice-Mayor Manheimer, Mr. Staudinger said this is a mortgage on the property. A portion of the mortgage was performing and a portion of that was deferred payment of principle and interest.

Councilman Davis was concerned that this was a housing rehab loan in 2006 and in looking at the house now, he wondered what type repairs were made since the roof and gutters need to be replaced, the house needs to be repainted, etc. Mr. Staudinger replied that the rehab records were found for this property so we have full documentation of the rehab. There was significant rehabilitation work for the property, which included replacement of all appliances and rebuilding of the kitchen, replacement of the bathroom, roof replacement (which at that time may have been a partial roof replacement), etc.

After further discussion, at Mayor Bellamy's suggestion, it was the consensus of Council to refer this back to the Housing & Community Development Committee to rethink this process not only for this issue but if we get the PACE Program using sustainability funds.

Councilman Hunt withdrew his motion.

Vice-Mayor Manheimer felt it would be helpful to have some policy going forward for future review of these type issues.

**D. RESOLUTION NO. 12-260 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO A CONSERVATION EASEMENT TO THE CONSERVATION TRUST FOR NORTH CAROLINA APPLICABLE TO THE NORTH FORK AND BEE TREE RESERVOIR WATERSHEDS**

City Attorney Oast said that this is the consideration of a resolution authorizing amendment of the Conservation Easement applicable to the North Fork and Bee Tree reservoir watersheds.

The North Fork and Bee Tree Reservoir Watersheds are subject to a conservation easement held by the Conservation Trust for North Carolina (herein "CTNC"). This easement was entered into in 1996, and was one of the first in North Carolina. One of the recommendations of the 2011-12 Legislative Research Committee studying the water system was for the City to work with CTNC to clarify the easement to aid in the protection of the drinking water used by the water system.

Individuals experienced in the field of conservation easements, including attorneys and conservationists, have reviewed the 1996 easement and have identified several ways in which the North Fork/Bee Tree Watershed easement might be revised to make it more consistent with current recommended practices. With this in mind, we have been working with Greg Gregory of the Asheville law firm of Marshall, Roth & Gregory to revise the easement. Mr. Gregory has

experience working with conservation organizations and conservation easements, and has ready access to other experts in the field.

He has met with Mr. Gregory on several occasions, and discussed several areas in the easement that should be considered for review and possible revision. They also reviewed information supplied by other conservation organizations, including the Southern Appalachian Land Conservancy and the Conservation Trust for North Carolina, as well as the easement for the Waynesville watershed, which is more recent than the North Fork/Bee Tree Watershed easement. Bearing in mind that the primary purpose of the watershed is to be a source of raw water for the water system, there is considerable overlap between that purpose and the purposes of land conservation. However, there are some areas where clarification is advisable.

1. Forest Management. The watershed was logged in the early part of the 1900's (before the City acquired it), but is now thickly forested. While one purpose of a conservation easement is to keep land in a natural or undisturbed state, some management of the forest within the watershed is needed to ensure that the watershed fulfills its primary purpose of providing drinking water. A forestry management plan was prepared in 2004, but has not been implemented. Forestry management goes much beyond harvest-oriented logging to include such issues as road and trail maintenance and construction, stream health, fire control and emergency access, and control of invasive plants and insects. Active maintenance in these areas can be critical to maintaining forest health for drinking water purposes.

The revised easement provides for the development of a detailed forest stewardship and property management plan, including wildlife and plant inventories, habitat protection, invasive species control, and stream buffers. Commercial logging of any kind is prohibited; to the extent that selective harvesting of trees is needed to maintain the watershed, prior notification and a plan are required.

2. Recreation/Other Uses. The current easement allows the use of the watershed property for recreation purposes not inconsistent with the watershed use. The City has previously allowed a segment of the mountains to sea trail to cross the upper end of the watershed property. Other uses, such as the filming of "The Hunger Games" movie, have occurred there. The range of permitted uses – other than water production and related uses - - has been more clearly defined. In essence, there is no commercial use of the property permitted, and no recreational use, except with permission of the Grantee. While this is a broad prohibition, the easement contained language that would allow for "other uses" that do not impair the conservation values, such as educational or research activities; or "any use for which a large, undeveloped tract of property is necessary or desirable."

3. Water Production. The revised easement affirmatively allows for use of the property for drinking water production. He showed a map which clearly identified the areas where the production facilities are located, and provided that such facilities may be enlarged, replaced, and maintained to ensure continued production of drinking water. The areas on which these facilities are located are excluded from the easement. Expansion of facilities on to the easement area is permitted if necessary for water production.

4. Enforcement. The revised easement contains more detailed provision regarding the Grantee's rights as to enforcement. Specifically, the revised easement allows access to Grantee to ensure compliance with the terms of the easement regarding water production activities, and other activities by the City. The easement also contains provisions, typical of many such arrangements, for notice of violation of the easement terms, and an opportunity to cure.

5. Surveys/Plats. As noted above, the easement provides for preparation of forest stewardship and property management plans. The responsibility for performing this work rests with the Grantor and Grantee jointly, with no allocation of responsibility for performing or paying for it. We have been advised that CTNC has obtained a commitment for funding for the initial plans, and the easement now reflects that. Subsequent updates (every 10 years) will be the City's responsibility, subject to annual budgetary allocation. Additional grant funding may be available for this in the future.

Similarly, the watershed property and its internal areas (impoundment area, water production facilities) have not been surveyed. A survey is the most precise way of identifying property boundaries, and the areas within the property. As with the forestry and property management plans, this survey work is important to fulfilling purposes of the easement, but it is recognized that the cost of completing it is substantial. Grant funding may also be available for some or all of this work. The City and CTNC could agree, via joint memorandum or letter, to cooperate in seeking funding for and facilitating the survey work.

While a survey does not yet exist, a written description does, and this is sufficient for purposes of the easement. A map has been prepared from the written description supplemented with GIS information, showing the boundaries and the location of the impoundment areas and water production facilities. The easement makes reference to this map. As survey work is completed, the easement can be amended to refer to it.

6. Binding Effect/Eminent Domain. The revised easement runs within the land, and would continue to be binding on the successors and assigns of the parties. An easement has value as an interest in land. If the property were taken for use by a governmental agency and the easement terminated, the holder of the easement is entitled to compensation for the value of the interest or partial interest taken.

7. Finalization/Recordation. This is an amendment to an existing easement, not the original grant of the easement. The statutes applicable to the granting of easements by cities provide for several ways to accomplish the grant. One method consistent with the original authorization in 1996 is to authorize the execution of the amendment, direct the clerk to publish a notice of the City's intent, and to finalize the transaction ten days after the advertisement has run. Using this method, the transaction could be completed by year's end.

This action is consistent with the recommendations of the legislative research commission, and consistent with the City's desire to maintain and improve the water system, as expressed in Resolution No. 12-36, adopted in February 2012.

Pros:

- Fulfills legislative request
- Strengthens protections for watershed
- Clarifies some ambiguities in current document
- Recognizes and preserves primary purpose of drinking water production

Cons:

- Limits flexibility with regard to other consistent uses of property
- Unknown cost of 10 year updates to plans.

Adoption of the resolution has no immediate financial impact. The cost of future surveys and plan updates would be included in the Water Resources Fund budget.

Adoption of the resolution is recommended.

Mr. Gregory explained what a conservation easement is and reviewed in detail the outlined above by City Attorney Oast.

Councilman Hunt said that years ago our leaders and citizens clearly had a vision that acquiring pristine forested watershed to ensure the quality of drinking water was very important, and in 1996 the conservation easement was adopted. Since 1996 the skill and thoroughness of understanding how conservation easements work and skill of attorneys at drafting them effectively has come a long way. We have many conservation easements on nearby watersheds, e.g., Woodfin, Waynesville, Sylva, Andrews, Bryson City, etc. All those easements are significant improvements and provide more thorough and certain protection for these conservation values. He felt that CTNC is an excellent reliable partner to adopt to the changing environment. This is a step to make sure that the original easement matches our practices in protecting the watershed.

Councilman Hunt moved for the adoption of Resolution No. 12-260, subject to minor editing changes. This motion was seconded by Councilman Bothwell.

Mr. Gregory said that this amended easement is subject to minor editing changes, noting that even there is no commercial recreation is allowed, the City would be able to request certain uses that are not served in the laundry list and, as long as the request does not impair the conservation values the property, the approval of that use would not be unreasonably denied or withheld by the CTNC. The CTNC would be able to impose conditions on that and that clause or term would only last so long as the City is still the owner of the property.

Mayor Bellamy asked several pertinent questions and received responses as follows:

1. Looking at other conservation easements, does the CTNC compensate the entity?
   Mr. Gregory said there can be easements of purchase or a bargain sale, but that is not the approach with this one, noting the easement already exists and we are only amending and restating it. No dollars have been exchanged.

2. The easement states that there is some buy-in effect and if we are to break the easement we have to compensate CTNC. What is the basis of that compensation?
   Mr. Gregory said that the CTNC is a 501 (c) (3) non-profit and they have certain duties they have to comply with in terms of holding these easements. From 1996 they already have a present compensable property right in this property that if there were any kind of condemnation that award is split between the property owner and the easement holder.

3. Concern that if the water system is taken from us by the State gives us a check through MSD, according to this easement, we have to split it with CTNC.
   Mr. Gregory said that is by operation of the law. Even if that clause were not in there, it would be split between the two entities because part of the property right with what an appraiser could attach a dollar value to that is already owned by the CTNC. The reason why that clause is in there is to clarify and state the existing state of facts.

   Vice-Mayor Manheimer said that if the system is somehow transferred to MSD and it includes this property, it would still be subject to an easement. The City may lose title entirely to the property, but it would still be subject to the conservation easement.

Mr. Gregory said that there may be some compensation due to the property owner at that point, but if the conservation easement is not interfered with, none of that compensation would go to the CTNC.

The legislators have a broad range of options. They could take the property subject to the easement or eliminate the easement.

4. What is the term of the conservation easement? We are saying that whatever happens to the watershed, City Council doesn't have any final say-so over it or how its run. We do have a responsibility to pay for and implement the forest management plan and update it every 10 years. We also have to prepare forest stewardship and property management plans, that are not even approved by City Council. We also don't know how much those will cost but we still need to implement it. We are binding future councils and are giving up ultimate authority over the watersheds.

   Mr. Gregory said that this easement is in perpetuity, forever. The grant has already been made in 1996 and that was perpetual as well. The language of the document is that broad enough to include potential funding or cost sharing to see if grant monies are available.

   City Attorney Oast said that we are relinquishing a greater degree of discretion than we had under the previous conservation easement. This is the product of the work done and shared with the Planning & Economic Development Committee. This is a policy decision for City Council. While it is true we are relinquishing some additional discretion with this amended easement, there was already a lot we couldn't do with the property.

5. This easement calls for disputes to go straight to court. She asked for some language to say that if after 30 days the dispute has not been taken care of, that we go to mediation opposed directly to court.

6. It's clear that the Grantor has access to the grounds for improving the water quality, but the Grantee has unlimited access. It should also be limited for the Grantee as well.

7. Regarding termination, it reads that the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award. That language should be clarified because it's not clear that if the City receives some money from the property being taken from us; it still reads as if CTNC gets a portion of that money even if the easement continues to go with the land.

8. If the CTNC cannot fulfill its obligations, why doesn't it come back to City Council for reconsideration instead of being assigned to Southern Appalachian Highland Conservancy listed, which is a Tennessee corporation? And, shouldn't there be a provision in the easement to let the Grantor know of the assignment?

   City Attorney Oast said the Southern Appalachian Highland Conservancy does have a strong presence here in Asheville. We thought it was important to have a back-up holder of the same stature as CTNC.

   Mr. Gregory said that the original easement has a back-up holder named the Nature Conservancy and part of the effort was to take it from a national organization as a back-up holder to someone local. The assignability of this document is the assigned by the holder already. He said said that a notice provision can certainly be added to the easement.

9. Mayor Bellamy asked if language could be included in the easement that specifically states that the Grantor retains the right to determine the ultimate use and distribution of the drinking water produced by the protected property.

Vice-Mayor Manheimer felt that Article III spells out quite clearly that the property is to be used for water supply.

Mr. Gregory said that the language in the first paragraph of Article III can be clarified to make it explicit that the Grantor undertake those uses.

Throughout Council discussion, Mr. Gregory and City Attorney Oast continued to respond to various questions/comments from other members of Council.

Councilman Davis felt this amended conservation easement goes beyond of what he anticipated. We have been good stewards of this property for many years.

Councilman Hunt said that there is a generous donor that often supports land conservation in different parts of the state and the CTNC has approached that donor and has received a tentative indication that he will fund those plan costs.

Councilman Bothwell understood these changes are making the conservation easement less brittle, because it doesn't say "yes" or "no" but at the same time it gives us better protection.

In response to Councilman Pelly, City Attorney Oast said that even though the State can terminate or condemn the easement that does not mean they wouldn't have to pay the holder of the easement the value of the rights that were taken.

In response to Councilman Davis, Water Resources Director Steve Shoaf said that his interest is protecting the water quality. He felt that the amended easement meets their needs in terms of water production. He agreed that we have done a good job in protecting this area and they have been interpreting the conservation easement to the strictest sense. The area that concerned him is able to be addressed under the amended conservation easement - the health of the forest in that we have a risk of forest fires due to dead fall and litter build-up, we need to be keeping track of that so that we don't have a catastrophic event on the watershed that would disrupt water quality. This amended easement will address that and we will be keeping a closer eye on the condition of the watershed. We have a written management plan but basically our approach is hands off. No one goes in and we have a staff of two that monitors and a hired security guard that helps monitor.

Councilman Smith will support this amended easement because he feels it is being standardized and modernizing. It was requested by the Legislative Study Committee to clarify the easement and was pleased that we may have someone to fund the plans.

Vice-Mayor Manheimer said there was strong community support for this conservation easement. We are ready for a long-term commitment in terms of the use of the property and the protection of it going forward and the point is to bind future councils. We are helping them make the future decision to always protect the property for this stated purpose.

Mr. Steve Schulte, Asheville resident, questioned what the legal relationship is between the protected property, the CTNC trust that holds that protected property, and the actual water (liquid). He asked for clarification on what the other uses would be allowed regarding recreation and if any of those uses involve the liquid water. He felt there are two issues (1) who distributes the water; and (2) who owns the water, who controls it and what rights do we really have to it. The right for us to use and distribute water does not exist in that document and the easement should be amended to include that language.

Mr. Bob Gale, Ecologist and Public Lands Director for the Western North Carolina Alliance, spoke in support of the amended conservation easement.

Mr. Hugh Erwin, Conservation Planner with the Wilderness Society, supported the amendments to the conservation easements.

City Attorney Oast said that the purpose of the conservation easement is to preserve the pristineness of the watershed and the forest resources within it. He then responded to the questions raised by Mr. Schulte.

Mayor Bellamy said that if we don't use the property anymore for water, the Grantee gets to set forth the rights of what will happen. Mr. Gregory said there are other consistent uses, like protecting and managing the forest and habitat, but he didn't think the easement contemplates that it would not be used for water. That is the number one use that is trying to be protected.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

The motion made by Councilman Hunt and seconded by Councilman Bothwell, subject to minor editing changes discussed, carried unanimously.

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**E. RESOLUTION NO. 12-261 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT THROUGH THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY FUND**

Assistant City Manager Jeff Richardson said that this is the consideration of a resolution authorizing the City Manger to apply for grant funding from the Tourism Product Development Fund (TPDF) during the 2013 funding cycle for the (1) Phase I of the "River to Ridge" initiative, a multi-modal approach to connecting visitors from the River Arts District to Overlook Park in downtown Asheville through a phased series of projects and (2) Phase III renovations at U.S. Cellular Center.

The Buncombe County Tourism Development Authority's Tourism Product Development Fund (TPDF) was created by the State Legislature in 2001. This makes funding possible for tourism projects that will increase the number of overnight stays by visitors in Buncombe County lodging properties. Project requirements must (1) increase lodging nights; (2) be shovel ready; and (3) matching funds.

The City has previously received TPDF funding for the Wayfinding Partnership and two phases of upgrades to the U.S. Cellular Center, including the ExploreAsheville.com Arena. Additionally, the WNC Soccer Foundation received $400,000 of funding for the City's John B. Lewis Soccer complex in 2002, 2004, and 2009. A history of all projects that have received TPDF funding is available on the website.

A "Frequently Asked Questions" information sheet that outlines the criteria and funding process for the TPDF is available on the website. This document answers many of the questions about the guidelines and eligibility for funding of projects.

In an effort to leverage resources and build on priorities in the City's strategic operating plan, develop partnerships with the Tourism Development Authority, and meet core funding criteria of the TPDF, staff has identified two projects for this year's funding cycle. Given that the TPDF does not fund design work, all preliminary work will be completed by the City.

The current year project requests will be for (1) U.S. Cellular Center renovations Phase III (a) TDA request is $850,000; (b) mezzanine level renovations to Explore Asheville.com Arena, club level amenities/additional meeting rooms; and (c) City match - $505,000; and (2) Phase I: River to Ridge Initiative: Overlook Park Development (a) TDA request is $1 Million; (b) overlooks, picnic areas, lighting, benches, signage, park entrance improvements, trash bins; and (c) City match - $1 Million.

This action supports the City's strategic priorities to invest in infrastructure and facilities while leveraging diverse sources of revenue to implement goals included in the City's master plans.

Pros:

- Allows the City to apply for revenue sources - outside of property taxes – to address infrastructure and other high priority projects.
- Like the U.S. Cellular Center project, the River to Ridge initiative is a multi-year, multi-phase project that would provide an opportunity to apply for funds in future TPDF cycles.

Cons:

- Projects must be "shovel ready" and include matching dollars; therefore, the City must program funds in the five-year CIP for land acquisition, design and other preliminary work to make projects eligible for future grant cycles. Funding is not guaranteed, and so the City would either have to delay projects or program contingency funding for construction if grant funds were not awarded.

Funding awarded during the 2013 cycle would allow the City to accelerate the Greenway Master Plan, the Wilma Dykeman Riverway Plan, the Bicycle and Pedestrian Plan and complete Phase III renovations to the U.S Cellular Center. Cost estimates for additional project components are being developed at this time and will be available by the time applications are due in January. CIP funding has been budgeted for components of both recommended projects. If grant funding was awarded for these projects, the projects could either be extended or CIP funds could be directed to other projects.

Future year considerations for 2014, 2015 and 2016 will be (1) Phase II: River to Ridge Initiative: Town Branch Connection; (2) Phase III: River to Ridge: Depot Street Connector and Clingman Forest Greenway; and (3) Nature Center Visitors Enhancement Project.

City staff recommends City Council approve the resolution as proposed.

Mr. Richardson and Parks, Recreation & Cultural Arts Director Roderick Simmons responded to various questions/comments from Council, some being, but are not limited to: where the City matching funds coming from for both of the projects; Friends of the Nature Center would like their project moved up from 2016; and are there places for people to access the Overlook greenway.

When Councilman Hunt felt we should be connecting downtown to the river as a priority, Mr. Simmons said that we already have the money budgeted for the design of the Beaucatcher project.

In response to Mayor Bellamy, City Manager Jackson said that staff can produce the Capital Improvement Plan and go through the list of of projects that might qualify but McCormick Field is not a project that rises to meet that criteria. Staff did not provide the list of projects that would not meet the criteria for the Product Development Funds. Mr. Richardson noted that the TDA wants to see an immediate connection of the investment and will this increase room nights. Some of the necessary improvements of the McCormick Field CIP, bleacher replacement as an

example, staff didn't feel that an improved level of seating would increase room nights. There is an exhaustive internal process to try to identify the projects that will be most competitive.

Ms. Judy Strong urged Council to apply for funds for McCormick Field because it is shovel ready and you have money funded to pay for the project. She suggested the City apply for the McCormick Field and ask for perhaps a match of half what is needed and if they approve it, the City will have at least half of their matching funds for something else.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Manheimer moved for the adoption of Resolution No. 12-261. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 35 - PAGE 148**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Timothy Sadler expressed concern for the natural gas industry.

In response to Councilman Hunt, Councilman Smith, liaison of the Transit Commission, said that they looked at going from B-5 to another blend but after much study it was ultimately decided not to pursue that.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 10:07 p.m.

CITY CLERK MAYOR

Tuesday – January 8, 2013- 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Marc W. Hunt (planned vacation)

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Pelly gave the invocation.

**I. PROCLAMATIONS:**

**Connecticut School Shooting**

Mayor Bellamy said that after the horrific elementary school shooting in Connecticut a lot of information has gone out to the parents in the City and County Schools. She has met with the County Commissioners, Sheriff, Police, Fire, Emergency Medical Services, Superintendents of the Asheville City and Buncombe County Schools, A-B Technical Community College, etc. about how to respond in our community. Sheriff Van Duncan is leading the effort to look at all our plans in place and to ensure they are the best plans. We will look to those that are in the emergency management field to help lead us. Behind the scenes, our public safety personnel are constantly meeting with our school systems to make sure they have updated plans regarding emergency management. The recent meeting wasn't the first time that our public safety personnel have met to talk about these issues. She pointed out that finding solutions to on-going problems will have to include mental illness, not just about gun safety. As we talk about these issues, she hoped we will look at them in a holistic manner. The Sheriff did ask for 30-60 days before he issued a report and the Police Chief will report back to Council if there are any budget implications.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 11, 2012**

**B. SECOND READING OF ORDINANCE NO. 4149 - ORDINANCE GRANTING A FRANCHISE AGREEMENT FOR THE OPERATION OF A PUBCYCLE SERVICE WITHIN THE CITY OF ASHEVILLE**

**ORDINANCE BOOK NO. 28 – PAGE 72**

**C. RESOLUTION NO. 13-1 - RESOLUTION SUPPORTING STAFF TO DESIGNATE CERTAIN ON-STREET AND OFF-STREET PARKING SPACES FOR CAR SHARING PURPOSES**

Summary: The consideration of a resolution supporting the City's Traffic Engineer to designate certain on-street parking spaces for car sharing purposes on an as-needed basis and for the City's Traffic Engineer to designate certain off-street parking spaces (surface parking lots and parking garages) for use by specific car share companies on an as-needed basis.

City Council's current strategic operating plan includes an objective to "study alternative options for parking, to include the creation of a downtown trolley". The Downtown Master Plan (DMP) also mentions this objective as well as an action step to dedicate some public parking spaces for use by shared-car services in order to expand mobility choices and reduce the need for downtown residents to own cars.

The DMP Transportation Sub-committee explored both ideas and concluded that a primary obstacle for a downtown trolley is money including capital and operating funds. They also felt that there would be direct competition for the funds with the current transit system. The sub-committee favors the concept of car sharing and the U-Haul Company has approached the City with a program that only requires the City to provide on-street parking spaces and the enforcement of the spaces (The City would also fabricate, install, and maintain the appropriate sign needed to identify the parking space). Staff shared the potential program with the Downtown Commission and received their support during February 2012.

The City's Legal Department then performed extensive research and concluded that the City is authorized to reserve on-street parking spaces for car sharing purposes generally but not to specific car share companies. Although staff (traffic engineer) has the authority to designate and/or restrict on-street parking spaces (according to the code of ordinances), the Legal Department recommends City Council approval as well because the potential parking spaces are located in the public right-of-way and there could be a revenue loss. They also concluded that the City is authorized to reserve off-street parking spaces (surface parking lots and parking garages) to specific car share companies. City Council approval is recommended for the off-street parking spaces since there could be a loss of revenue.

This action complies with the City Council Strategic Operating Plan in the Multimodal Transportation Area by providing an alternative option for downtown parking and in the Job Growth and Community Development Area by supporting diversified job growth and business development.

This item has been reviewed by the Council's Public Safety Committee and it received the Committee's endorsement on November 26, 2012.

Pros:

- Would compliment the City's overall transportation system.
- Serve public purposes such as providing an alternate means of transportation, reducing traffic congestion, and lessening the environmental impacts of commuting.
- Would enable downtown residents to choose not to own a vehicle.

Con:

- Loss of revenue generating on-street parking space(s).

The fiscal impact for a car sharing program within the public right-of-way would be the value of a metered on-street parking space and the cost to fabricate and install an appropriate sign to identify the parking space. Based on revenues collected during FY 2011-12, staff estimates that the amount of lost revenue annually from this program would be less than $1,900. The estimated cost to fabricate and install an appropriate sign is about $50.

Staff recommends that City Council approve a resolution supporting the City's Traffic Engineer to designate certain on-street parking spaces for car sharing purposes on an as-needed basis and for the City's Traffic Engineer to designate certain off-street parking spaces (surface parking lots and parking garages) for use by specific car share companies on an as-needed basis.

**RESOLUTION BOOK NO. 35 - PAGE 149**

**D. RESOLUTION NO. 13-2 - RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AND, IF AWARDED, ENTER INTO A GRANT AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR CONSTRUCTION OF THE BEAUCATCHER GREENWAY**

Summary: The consideration of a resolution authorizing the Mayor to apply for and, if awarded, enter into a grant agreement with the N.C. Dept. of Environment and Natural Resources for construction of the Beaucatcher Greenway.

Funds are available through the N.C. Dept. of Environment and Natural Resources, Division of Parks and Recreation in the Recreation Trails Program (RTP) to assist with the development of parks, recreational facilities, and greenways. The City wishes to submit a grant application not to exceed $200,000. If awarded, grant funds will be used to reimburse the City for future expenses related to construction at the Beaucatcher Greenway.

The grant application requires a cash, in-kind, or force labor match of 25 percent of the requested funds ($50,000). The cash match is available through funds currently budgeted in existing capital projects.

In 2008, the City received a grant from the North Carolina Parks and Recreation Trust Fund to assist with the land acquisition for Beaucatcher Greenway. City Council approved the City Manager to enter into a contract to develop architectural and engineering construction documents for Beaucatcher Greenway on November 27, 2012.

Construction for the greenway will begin at Memorial Stadium, travel north along the west slope of Beaucatcher Mountain to College Street for a total of 1.25 miles. The RTP grant application will support construction elements that include erosion control, grading, stone basing, and asphalt paving.

The Recreation Advisory Board endorsed Beaucatcher Greenway as a priority greenway linking downtown Asheville to the French Broad River at its meeting on April 9, 2012.

This action complies with the City Council 2012-2013 Strategic Operating Plan in the areas of Fiscal Responsibility in that it provides alternatives for enhancing the City's long-term financial commitment to Master Plan implementation, infrastructure maintenance, capital improvements, and public facilities. This action also complies with the Parks, Recreation, Greenways, and Cultural Arts Master Plan in that it 1) increases the urban network of parks and greenways in the downtown Asheville area; and 2) increases funding with alternative funding via grants and ensuring a high level of service in parks and facilities by addressing capital projects to meet community standards. In addition, this action complies with the River-To-Ridge Initiative in that Beaucatcher Greenway is a priority greenway corridor that will link downtown Asheville to the French Broad River via continuous multi-access parkway connecting bike lanes, sidewalks and greenways.

Pro:

- If awarded, the grant will reimburse the City for future construction expenditures up to $200,000.

Con:

- The grant application process is competitive and a grant award is not guaranteed.

If awarded, the grant is for one-time construction cost for the Beaucatcher Greenway that will increase the budget not to exceed $200,000. This increase is funded by a grant from the North Carolina in the Department of Department of Environment and Natural Resources' Recreation Trails Program. The grant application requires a cash, in-kind, or force labor match of 25 percent of the amount requested ($50,000), which is already available through a combination

of funds currently budgeted in existing capital projects. Thus, there is no impact to the City's General Fund budget.

City staff recommends City Council to adopt a resolution authorizing the Mayor to apply for and enter into an agreement for grant funds through the North Carolina in the Department of Department of Environment and Natural Resources Recreation Trails Program not to exceed $200,000 for reimbursement of future construction costs for the Beaucatcher Greenway.

**RESOLUTION BOOK NO. 35 - PAGE 150**

**E. RESOLUTION NO. 13-3 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SITEWORK STUDIOS TO DEVELOP ARCHITECTURAL AND ENGINEERING CONSTRUCTION DOCUMENTS FOR THE CLINGMAN FOREST AND TOWN BRANCH GREENWAYS**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Sitework Studios to develop architectural and engineering construction documents for the Clingman Forest and Town Branch Greenways, and to conduct other necessary pre-development activities for a project budget not to exceed $370,000.

The Clingman Forest Greenway and Town Branch Greenway constitute a priority alternative transportation corridor through the core of the East of the Riverway Target Area. These multi-modal greenways will eventually connect with the Beaucatcher Greenway and comprise a significant and important portion of the River-To-Ridge Initiative.

*Clingman Forest Greenway* – The Clingman Forest Greenway will stretch between Aston Park at Hilliard Avenue and Clingman Avenue. The off-road, 0.5-mile trail will largely follow the unopened city right-of-way of Eugene Avenue through a wooded ravine. Secondary trails to rock outcrops along the perennial stream will be considered as well as connections to Asheville Middle School, YWCA, Aston Towers, and other destinations.

*Town Branch Greenway* – The Town Branch Greenway will extend from Depot Street, in the River Arts District, to the intersection of Phifer and McDowell Street. The 1.3-mile corridor will begin adjacent to Green's Market on Depot Street and extend off-road along the rear of the Dr. Wesley Grant, Sr. Southside Center and fire station and out to South French Broad Avenue. The off-road trail will pick up across the street and extend through the wooded ravine along Town Branch Creek to Congress Street. The greenway will cross Congress Street, follow the creek through City park property, cross over Choctaw Street and extend north through city property along Old Asheland Avenue. The corridor will terminate at the intersection of Phifer and McDowell Street.

The development of final design and construction documents for the Clingman Forest and Town Branch Greenways is one of the deliverables of the East of the Riverway Sustainable Multi-Modal Neighborhood Program, supported by a TIGER II Planning Grant awarded to the City of Asheville by the US Department of Transportation. The TIGER II funds allocated to the two Greenways totals $280,000, supported by a City cash and in-kind match of $56,000 (20% of grant funds).

City Council appropriated funds for staff to proceed with a land acquisition within these corridors by allocating funds in the CIP budgets of 2010-11 and 2011-12.

In February 2009, City Council approved the Parks, Recreation Cultural Arts, and Greenways Master Plan which identifies Clingman Forest and Town Branch Greenways s as priority greenways.

Staff followed the municipal and required Federal Transportation Administration "Request for Qualifications" procurement processes to seek qualified, professional firms to develop final design and construction documents. Staff received eight applications, and a panel of staff and community members reduced this pool to three finalists. After thorough review and evaluation, the review panel recommended Sitework Studios, located at 352 Depot Street, Asheville, North Carolina as the most qualified to perform the architectural and engineering services for the Clingman Forest and Town Branch Greenways. Staff has successfully negotiated a final scope of work and project budget with Sitework Studios.

This action complies with the City Council Strategic Operating Plan Multimodal Transportation Goal to integrate and implement a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit, greenways, streets, rivers and access to the river, and other system improvements resulting in funding priority list. This action also complies with the Parks, Recreation, Cultural Arts and Greenway Master Plan in that it increases the urban network of parks and greenways in the downtown Asheville area. In addition, this action complies with the River-To-Ridge Initiative in that Clingman Forest Greenway and Town Branch Greenway are primary greenway corridors to link French Broad River and downtown Asheville via a continuous multi-access parkway connecting bike lanes, sidewalks and greenways.

Pros:

- Expand the ability to provide recreation resources to a number of residences and neighborhoods that can be linked to this corridor
- Provide a critical linkage in the River to Ridge Initiative
- Enhance multi-modal transportation in the community
- Compliment the recent improvements made by the City and private sector in these neighborhoods
- Engage community members in the design process
- Complements other multi-modal transportation planning efforts in the community

Con:

- Once complete, the project will require additional maintenance resources.

This project is funded with budgeted sources, with local funds leveraging significant federal funding. The $370,000 to support the contract is budgeted via HUD TIGER II Grant ($280,000), Stormwater Account ($29,500) and the CIP Greenway Development Account ($60,500). The City cash resources, along with City in-kind staff hours, are more than sufficient to meet the match required by the grant; such amounts have been approved by Council.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Sitework Studios to develop the architectural and engineering construction documents for the Clingman Forest and Town Branch Greenways for an amount not to exceed $370,000.

**RESOLUTION BOOK NO. 35 - PAGE 151**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Smith moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

**III. PRESENTATIONS & REPORTS:**

## A. GREENWAY COMMISSION UPDATE

Mr. Jim Grode, Chairman of the Greenway Commission, briefed Council on their activities of the past year and goals for the upcoming year.

Mayor Bellamy was concerned of the Commission's goal to "pursue the means to readily add projects to the Parks & Recreation Master Plan". She said that the Master Plan is essentially unfunded and we are working on pieces of it. We already have a long list of projects that the community is waiting on. She questioned adding more projects into that plan that has already had substantial community input and no funding plan in place.

City Manager Jackson said that staff will be working with the Greenway Commission during their retreat to help distinguish between vision documents and a capital plan that has money behind it. There should be some flexibility for your advisory body to gain public input and make the vision document a live, dynamic document so that it gets refined overtime.

Mayor Bellamy asked that before public hearings are held about adding new projects that City Council is advised about what will be pursued. Mr. Grode said that what Mayor Bellamy is suggesting is exactly what the Commission had in mind. They would be looking at a vision document and not a funding-based document at this point.

Mr. Grode responded to Councilman Smith when he asked how the Greenway Commission will be involved in the multi-modal plan process.

On behalf of City Council, Mayor Bellamy thanked Mr. Grode for his leadership and the entire Commission for their dedication.

## B. ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION UPDATE

Ms. Hillary Cole, Chairman of the Asheville-Buncombe Historic Resources Commission, briefed Council on their activities of the past year and goals for the upcoming year. She requested the City write a letter to the County asking for an increase in the amount of money they provide to the HRC (in 2012 they received $4,500), since it is a joint body created in 1979.

Vice-Mayor Manheimer said that there may be a way to approach the County other than a public address about increasing their funding, since the provision regarding the funding states that "an annual budget *may* be appropriated ...". She felt there may be a way to broach that conversation with the County and have them look at the funding differently.

At the request of Councilman Smith, Ms. Cole said that she would provide Council with a copy of the Historical Structure Inventory.

Ms. Cole responded to Councilman Smith when he asked what city in the nation would the HRC see as a model going forward. She said that Charleston, S.C., has a good preservation plan in place but it is extreme. Austin, Texas, has a good plan, and Salisbury, N.C., has a really good way of looking at preservation and development.

Mayor Bellamy asked that going forward, as you look at the different models, she hoped that the Commission would be open to looking at a hybrid of the different models for preservation minded development.

On behalf of City Council, Mayor Bellamy thanked Ms. Cole for her leadership and the entire Commission for their dedication.

## C. WATER RESOURCES UPDATE

Project Manager Phil Kleisler updated City Council on the Water Resources process update from December 11, 2012 - January 8, 2013. He then provided Council with the information sharing between the City and MSD, along with resolutions from the Town of Franklin and City of Conover opposing legislation that provides for the forced taking of municipal water systems. The City of Hendersonville had the item on their agenda; however, it was pulled at the last minute.

**RESOLUTION NO. 13-4 - RESOLUTION REQUESTING INCLUSION OF ITEM FOR N.C. LEAGUE OF MUNICIPALITIES ADVOCACY AGENDA FOR 2013: RETENTION OF LOCAL CONTROL OVER PUBLIC ENTERPRISE UTILITY SYSTEMS**

City Attorney Oast said that the North Carolina League of Municipalities will be holding its legislative advocacy goals conference on January 23 and 24. This is the occasion where the League develops and approves its legislative agenda for the coming session of the N.C. General Assembly.

Asheville's experience with recent legislative actions regarding its water system has attracted the attention of the League and several North Carolina cities. The potential for Asheville's experience to establish a precedent for other cities is a matter that concerns the League and its members, and we are asking the League to consider including an item addressing this issue among its legislative advocacy goals for 2013.

As noted above, the League's legislative advocacy conference is January 23 and 24. In order to be eligible for consideration, this request must be made on or before January 14.

Councilman Bothwell heard that the reason why the City of Hendersonville withdrew their resolution was due to a threat conveyed from one of the legislators that things would not go well for Hendersonville if they voted for it. We cannot allow the legislators to take assets from people in our City or our State.

City Manager Jackson said that we are continuing with our good faith relations with the Metropolitan Sewerage District (MSD). There are opportunities to achieve additional economies thorough partnerships and sharing of functional operations, such as fleet management and purchasing operations. He will be communicating in writing to the General Manager of MSD that we are happy to explore those in greater detail with them to make sure that both utilities are operating at peek efficiency.

Mayor Bellamy said that at the event with Governor McCrory he said that he was open to receiving information about the water system, so we did supply a package of information to him. Governor McCrory said that what was important to him was the system being run effectively. She has asked the City Manager to prepare some information for the Governor specifically on that issue, noting we have an increased bond rating, a Capital Improvement Plan, a program in place that details how we will spend our money and what the money will be used for, and that the investments made have transformed our system. She also suggested a copy of that information be provided to the City's legislative liaisons so they can approach the appropriate folks.

Vice-Mayor Manheimer said that when we met with the local legislators in the recent information sharing meeting, it was easy to be an advocate for Asheville and the running of our water system because our staff has done a great job. Since the agreement under the Water Authority was terminated, our financials are transparent, our bond rating has increased, and the investment in the system has been improved. One of the hurdles that we face legislatively is the perception about the running of the water system, and that has been addressed - the system is

extremely well run and extremely efficient and managed from a financial standpoint in a very responsible way. That cannot be a motivating factor for any legislative action.

Mayor Bellamy noted that the Governor saw the protestors on Macon Avenue and he asked that any discourse stay at the level of respect.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Pelly moved for the adoption of Resolution No. 13-4. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 152**

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE APPROVED CONDITIONAL USE PERMIT FOR THOMS ESTATE SUBDIVISION LOCATED OFF OF FRENCH WILLOW DRIVE AND BOUNDED BY WILD CHERRY ROAD, BEAVERDAM ROAD AND ELK MOUNTAIN SCENIC HIGHWAY, TO ALLOW CHANGES TO COMMON AREA AMENITIES, SECONDARY FIRE DEPARTMENT ACCESS AND A VARIETY OF ARCHITECTURAL DESIGNS FOR SINGLE FAMILY RESIDENCES**

**ORDINANCE NO. 4150 - ORDINANCE AMENDING THE APPROVED CONDITIONAL USE PERMIT FOR THOMS ESTATE SUBDIVISION LOCATED OFF OF FRENCH WILLOW DRIVE AND BOUNDED BY WILD CHERRY ROAD, BEAVERDAM ROAD AND ELK MOUNTAIN SCENIC HIGHWAY, TO ALLOW CHANGES TO COMMON AREA AMENITIES, SECONDARY FIRE DEPARTMENT ACCESS AND A VARIETY OF ARCHITECTURAL DESIGNS FOR SINGLE FAMILY RESIDENCES**

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:56 p.m.

Mr. Pennington submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Memo & Staff Report).

Mr. Pennington said that this is the consideration of an amendment to the approved conditional use permit for Thoms Estate Subdivision located off of French Willow Drive and bounded by Wild Cherry Road, Beaverdam Road and Elk Mountain Scenic Highway, to allow changes to common area amenities, secondary fire department access and a variety of architectural designs for single family residences.

Mr. Pennington said that applicant is requesting an amendment to the previously approved conditional use permit to modify elements of the approved master plan related to common amenities, access and architectural features.

The project site consists of a subdivision of approximately 82.72 acres located within the vicinity of Elk Mountain Scenic Highway, Tsali Trail, Beaverdam Road and Wild Cherry Road. (Aerial map - Attachment to City Exhibit 3) The site is accessed by an internal "spine" road known as French Willow Drive. Other smaller streets have been constructed within the subdivision with direct access to French Willow Drive. The majority of the subject property is zoned RS-4 and the steepest portion of the property to the north is zoned RS-2. The site is located in the City of Asheville's corporate limits with the exception of approximately one acre that is located in the extra-territorial jurisdiction (ETJ). Surrounding properties are zoned RS-2, RS-4, RS-8 and RM-6.

The Thoms Estate project was approved by City Council on April 10, 2007, as a 132 unit residential subdivision, reviewed as a conditional use permit for 4 phases. They started Phase I (City Exhibit 4 - Copy of Master Plan). The project received modifications from City Council under a previous system that allowed for development standards to be modified if the project achieved at least three (3) higher standard amenities as identified on the Exceptional Development Checklist. As part of this approval, City Council approved modifications to setbacks, lot sizes, lot widths, road right-of-way widths and sidewalk requirements. Sidewalks were constructed along Elk Mountain Scenic Highway, Tsali Trail and a portion of Wild Cherry Road. A fee-in-lieu of sidewalk construction was collected for the remaining frontage along Wild Cherry Road. Pedestrian access was proposed at multiple access points including Elk Mountain Scenic Highway, Tsali Trail and Wild Cherry Road and a greenway easement was proposed along Beaverdam Creek.

Grading and infrastructure construction started on the site in the fall of 2007 under the direction of the former owner – Global Development Resources. Lot sales were lackluster and construction of this project later coincided with the downturn in the economy in 2008. The property was foreclosed upon by BB&T Bank in 2010 and the bank moved forward with the development of the remaining subdivision infrastructure for phase I and two subsequent phases – II and IIIA. Pursuant to the original CUP approval, subsequent phases receive a final review by the Technical Review Committee. Two final phases of the project remain – IIIB and IV. Earlier this year, BB&T sold the property to the current developer – Gated Communities of Asheville, LLC.

The original approval included an ambitious list of amenities that were more typical of higher end subdivisions during the height of the real estate boom in the middle of the last decade. The current owner is proposing an onsite alternative to the secondary fire department access and to scale back some of the common area amenities. The following modifications are requested:

- The original approval required that a cross access agreement be executed between the Thoms property and the property retained by Selene Thoms (Thomsland Inc) for fire access purposes. The revised request includes a redesigned road system that provides direct, onsite access to Phase IIIB and IV. This request has been reviewed and approved by the Fire Marshal's office. **The staff supports this request.**

- The developer has agreed to follow the original condition that the gates remain open from sunset to sundown. They would like to consider an adjustment to the hours, but not at this time.

- Home plans were required to be prepared by registered, licensed architects and reflect renderings/elevations representative of the European Cottage/Manor Style including extensive use of stone, brick and exposed timbers. The revised request proposes to utilize the European Cottage/Manor Style of residential construction as well as other architectural styles common in the neighborhoods of North Asheville (Attachment to City Exhibit 3). Registered, licensed architects will still prepare these plans that will still make extensive use of stone, brick and exposed timbers. **The staff supports this request.**

- The Manor House and gardens were proposed to be restored and used as a community/fitness center and include a pool. The revised request proposes to demolish the existing Manor House and construct a small community pavilion, gardens, fire pits, walking paths, playground, soccer field, basketball court and horseshoe pits. The change is because the developer has found the home to be in very poor condition, making it fiscally prohibitive to restore for this purpose. Also, the revised concept for the use does not support the originally proposed level of amenities. **The staff supports this request.**

- A museum was to be provided in one of the historic structures on the property (Manor House or Killian House). In lieu of this requirement, a memorial garden featuring a statue of Harold Thoms and plaques highlighting his contributions to the City of Asheville will be installed. **The staff supports this request.**

- An existing barn and stone silo were to be adaptively reused/transformed into a community pavilion. The barn was previously demolished without approval by the original developer, and the silo was deemed unsafe by a consulting structural engineer and is now proposed to be demolished. The remaining stone is proposed to be reused to construct the fire pits listed above. **The staff supports this request**.

- A conservatory was required to be provided. The revised request does not include a provision for a conservatory primarily because of the reduced level of amenities being offered. **The staff supports this request.**

- Sidewalk/Bus Shelter Alternatives: A sidewalk was required to be constructed along Beaverdam Road (City Exhibit 5 - Gray copy of Beaverdam Road Sidewalk Compliance Plan). The developer has requested to construct a greenway path that would be positioned further back from Beaverdam Road in lieu of traditional sidewalk construction along Beaverdam Road. After further review, staff verified that Beaverdam Road is not a needed linkage as identified in the *City of Asheville Pedestrian Thoroughfare Plan* or as part of the original CUP approval. In lieu of the sidewalk along Beaverdam, the following options have been offered to the developer by the City Transportation Director:

    - Construct the proposed greenway path making sure that the portion of the path that parallels Beaverdam Road is constructed according to current City of Asheville standards, including a 10-foot width and an asphalt surface and extending it to Skyview Drive and Sycamore Street as proposed by the developer.

- Pay a fee-in-lieu of sidewalk construction for the remaining property frontage along Beaverdam Road from Sycamore Street to the property line (200 feet +/- at $57.30 per linear foot = $11,460).

- In addition to the sidewalk options listed above, the developer has the option to relocate the required bus shelter from its previous proposed location near the Killian House closer to the intersection of Beaverdam Road and Wild Cherry Road including the appropriate pedestrian connection (concrete sidewalk) back to French Willow Drive.

**The staff supports this request.**

- A small parking area was to be provided in the vicinity of the stone silo. A parking area is proposed in the vicinity of the community pavilion and in lieu of the parking area near the stone silo, a small looping trail is proposed. **The staff supports this request.**

This project was approved with conditions by the Technical Review Committee on November 5, 2012. No opposition has been received at the time of this writing. As an amendment to a previously approved Conditional Use Permit, review by the Planning & Zoning Commission is not required.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposed use and development of the land is compatible with the natural features and topography of the site. The majority of the infrastructure for the first three phases of the project has been completed and the remaining infrastructure and landscaping that has not been installed is covered by a valid letter of credit.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The proposed residential use is compatible with the surrounding residential neighborhood and should not injure the value of nearby properties. Completing the remaining subdivision infrastructure and remaining two (2) phases of the project should benefit the neighborhood and bring closure to a project that has been under some level of construction since 2007.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

The completion of a single-family residential subdivision is compatible with surrounding land uses that are similar in scale and density with this project. The proposed modification to architectural designs for the single-family homes will be more compatible with surrounding residences than only constructing European Cottage/Manor Style homes.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
This plan is still in general alignment with the concept plan that was originally approved by City Council and therefore still consistent with conformity to the comprehensive plan and other adopted policies. The amendment was submitted with the goal of providing more realistic common amenities to residents of the Thoms Estate. The proposals to gate the property 24 hours a day and not provide sidewalk along Beaverdam Road, however, are inconsistent with City adopted ordinances, goals and policies.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
This site is served by the #2 bus route and a bus stop is located at the intersection of Beaverdam Road and Wild Cherry Road. The placement of a bus shelter along Beaverdam Road near the Killian House has always been a requirement of this development. The modification to allow for onsite secondary fire access provides assured ingress/egress to the site for emergency vehicles. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
There is no traffic congestion or traffic hazard anticipated as a part of this proposal.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- This amendment will allow the developer to proceed with and close out a subdivision that has been under some form of construction and grading activity since 2007.
- The proposed modifications to common amenities are more realistic than the ambitious list of amenities proposed by the original developer.

Con:

- The amendment proposes to gate the development 24 hours a day and not construct sidewalk along Beaverdam Road.

Staff recommends approval of this amendment to the previously approved Conditional Use Permit including the modifications supported by the staff and the conditions recommended by City staff.

In response to Councilman Bothwell, Mr. Pennington said that there are no changes to the open space they will be providing.

In response to Councilman Pelly, Mr. Bob Grasso, land planner for the project, explained in detail (using City Exhibit 5) the sidewalk alternative being requested, noting that the section for the fee in lieu of is steep and they would need to take down a lot of trees to try to get a sidewalk in close to Beaverdam Road. The length of the greenway from Wild Cherry to Skyview Drive is

approximately 800 feet. The loop inside the greenway is not to greenway standards, but but the standards for the development. Right now they are dedicating the right-of-way with the greenway trail.

In response to Councilman Pelly, Director of Transportation Ken Putnam said that staff is confident the sidewalk alternative is a better solution. He feels the trail will be used by more immediate people in the neighborhood.

Ms. Laurie Pandy, owner of two lots in the Thoms Estate, said she has not been made aware of anything, but still receiving homeowner bills for pool dues and club dues for pools and clubs that don't exist. Homeowners should be included in any plans for the development.

Mr. and Mrs. Eric Niwinski, property owners on Wild Cherry Road, said they do need a sidewalk on Beaverdam Road. Ms. Niwinski wanted to confirm that this development will also be a bicycle friendly. She said that this is the second failed developer and wanted to make sure that the current developer will follow standards. They questioned by the City allowed the infrastructure problems occur without any interference. Hours of construction also is a concern.

Mr. Shawn O'Connell, area resident, said his biggest concern was the need for sidewalk connectivity. He also asked that soil erosion runoff be monitored.

At 6:22 p.m., Mayor Bellamy closed the public hearing.

At Mayor Bellamy's request, Mr. Pennington replied to some of the public comments. The current developer brought the property on March 29, 2012. BB&T were the prior owners and they finished Phase I, Phase II and Phase III-A. He said there were a number of substandard construction details so BB&T had to go back and correct a lot of the mistakes done by the previous developer. We have 1 or 2 inspectors are assigned permanently for the development. We have a Letter of Credit on a couple of items remaining in Phase I, but for the most part, Phase I, Phase II and Phase III-A are to completion.

In response to Mayor Bellamy, Mr. Grasso said that when he worked for BB&T he had several meeting with property owners and area residents. The current owner has met with Ms. Pandy and he provided Council with a letter that the new owner sent to all property owners (Applicant Exhibit 1). As far as construction hours, he has talked with the contractor to make sure that they know it's important that they work within the construction hours. Every effort has been made to try to control the water run-off when infrastructure repairs were made. They will continue to work on those items throughout the project. They will do their best to be a good neighbor.

In response to Vice-Mayor Manheimer, Mr. Putnam said staff is actively trying to pursue the sidewalk connection from Kimberly to Elk Mountain Scenic Highway. The major problem has been right-of-way from the County Club Golf Course. We also recognize that in the future an important connection will be along Elk Mountain Scenic Highway to bring the sidewalk from this development all the way down. He explained that the gap on Beaverdam Road towards the property itself is not listed on the Master Plan, so for any project on that corridor they have the option of a fee in lieu of. Assuming it would be a long time before the gap would be completed, because we are concentrating on gaps that are needed linkages in the Master Plan, we felt a greenway system path that runs parallel to Beaverdam Road would still give the walkability sense. This will not be a fix for every project, but he feels it is for this particular place. The gap is now on their radar to fill.

When Councilman Smith asked about a future dog park, Director of Parks, Recreation & Cultural Affairs Roderick Simmons, said that because he has not heard of this before now, there is no staff analysis of what it would take to run a dog park or how it fits into the Master Plan. He suggested that they have the opportunity for public dialogue on the best use of that open space.

In response to Mayor Bellamy, Mr. Grasso said they will construct a small community pavilion, gardens, fire pits, walking paths, playground, soccer field, basketball court and horseshoe pits. Since the Asheville Country Club is close by, they are trying to fill the gap of the services that the County Club doesn't offer.

In response to Councilman Pelly about the hours of construction, Assistant Planning & Development Director Shannon Tuch said the construction hours in the ordinance are from 7 a.m. to 7 p.m. She noted that there is an application process to extend the hours because for some projects it doesn't make sense to stop half-way through at 7 p.m. They can apply for an extension of construction hours for a limited period of time. Beyond that, it does become a noise ordinance issue and the Police Department is responsible for regulating the noise ordinance.

Councilman Davis found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4150, amending a conditional use permit for the Thoms Estate, including the modifications supported by the staff, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; and (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards. This motion was seconded by Councilman Smith and carried unanimously.

**ORDINANCE BOOK NO. 28 - PAGE 79**

**B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REMOVE A BAN IN PLACE FOR OUTDOOR SPEAKERS APPLIED TO EATING AND DRINKING ESTABLISHMENTS LOCATED IN THE CENTRAL BUSINESS DISTRICT AND RIVER DISTRICT ZONED AREAS**

**ORDINANCE NO. 4151 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REMOVE A BAN IN PLACE FOR OUTDOOR SPEAKERS APPLIED TO EATING AND DRINKING ESTABLISHMENTS LOCATED IN THE CENTRAL BUSINESS DISTRICT AND RIVER DISTRICT ZONED AREAS**

Mayor Bellamy opened the public hearing at 6:43 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance amending the Unified Development Ordinance to remove a ban in place for outdoor speakers applied to eating and drinking establishments located in the Central Business District and River District zoned areas. This public hearing was advertised on December 28, 2012, and January 4, 2013.

For some time, there has been a prohibition on outdoor speakers for the 'eating and drinking establishments' use in seven zoning districts including the Central Business District and River District. A similar ban in the CBD (and five other zoning districts) is in place for the "Microbrewery" use that was created several years ago. These UDO bans appear to have been created out of concern for potential noise conflicts between outdoor seating areas of these food and beverage use businesses (focused CBD and River) or to avoid noise conflicts with nearby

residential areas (the situation for the other zoning districts). (Although, there is not a ban for the nightclub use, which may also have outdoor seating areas.)

Over time, however, the number of restaurants downtown and in the River district has grown tremendously, creating successful dining and entertainment districts where ambient music has come to be expected in the outdoor seating areas. The existence of the ban was brought to the Downtown Commission from a downtown restaurant operator who had received a 'notice of violation' letter from staff. Staff had received a complaint about the outdoor speakers that were in place in an outdoor dining area.

The speaker ban has been difficult to enforce since most business operators do not consider this type of feature a 'use' and therefore do not expect to have it addressed by a zoning permit. Few business owners would apply for a building permit just to install speakers since it is such a minor addition. As the number of restaurants and "drinking establishments" has expanded, the use of speakers has reportedly grown; but there have been very few complaints about noise levels (besides the one noted earlier) in either district. As a rule, the downtown and river district business owners work well with their neighbors because of their close proximity to one another. Therefore, the staff is recommending that this ban be removed from the Central Business and River zoning districts. (This change will also affect the two small CBD zoned areas along Haywood Road in West Asheville. Much of Haywood Road is zoned CBII, where there is no ban.)

No change to the restriction for "eating and drinking establishments" is recommended for the other affected districts (Office, Office Business, Office II, Institutional, and Neighborhood Business), or for the other districts where the "microbrewery use" is permitted (Office, Office II, Office-Business, Institutional, and Resort) as they have greater potential for being in or immediately adjoining residentially zoned areas and having conflict and noise concerns. The "eating and drinking establishments" section of the UDO also bans drive-through facilities for all these zoning districts and no change to that restriction is proposed.

If the outdoor speaker ban is removed noise complaints would be enforced through the noise ordinance. That ordinance was recently reviewed and strengthened by City Council, and the Asheville Police Department will continue to enforce noise complaints using the 'reasonable person' standard. Staff feels that in many cases, noise complaints are best handled by the noise ordinance and not by the UDO.

The Downtown Commission at their meeting on October 12 voted 6-0 to recommend removal of the ban in the CBD. After the DTC discussion and further review of the UDO, staff also felt that the ban for speakers in the River District would be likely to meet support since these districts are similar in their support for eating and drinking establishments. The issue was presented to the River Arts District Business Association and at their November 27 meeting they voted 9-0 to endorse the proposed amendment removing the speaker ban. He talked with a few members of the West Asheville Haywood Road Corridor Group about the speaker ban removal for the CBD and most were supportive of it.

The Planning and Zoning Commission considered the proposed amendment at their meeting on December 5. After substantial discussion, the Commission supported the amendment with a vote of 4-2. At the meeting the only non-supportive public comment was from a west Asheville resident concerned about allowing outdoor speakers in the two CBD sections along Haywood Road. He felt that the close proximity to residential neighbors could create noise complaints and negatively impact the area. In a response, the staff noted that the majority of the properties along Haywood Road are zoned Community Business Two (CBII) and that outdoor speakers are allowed in this district. Several Commission members expressed some concern that the noise ordinance will not do enough to curtail businesses making too much noise. Some members were also concerned that not enough consideration was being made for the residents living in areas like the CBD. Staff noted that there are different expectations for noise when

residents live in areas zoned for higher density mixed-uses. If City Council reviews the noise ordinance after a year, several Commission members expressed a desire that noise complaints from eating and drinking establishments with outdoor speakers be reviewed as well.

This action supports the City Council Strategic Operating Plan for job growth and economic development which seeks to remove barriers to a robust and vital economy through the removal of unnecessary regulations.

Pros:

- Supports the continued vitality of downtown Asheville and the River district.
- Removes an unnecessary restriction from the CBD and River Districts.

Con:

- There is community concern about how noise complaints will be resolved.

City staff recommends City Council adopt an ordinance to remove a ban on outdoor speakers in the Central Business and River districts by amending the UDO.

Mr. Rich Lee was concerned about the two portions of CBD on Haywood Road because that zone is about one building deep and most of the properties adjoining are renters and they may not be aware of the noise ordinance or recourse if they have complaints.

Mr. Alvis Tingle, Kenilworth resident, hoped that Council would ban outdoor speakers in bars and restaurants due to the expected problem of noise.

At 6:52 p.m., Mayor Bellamy closed the public hearing.

Councilman Davis said that in one year Council will be revisiting the noise ordinance and this portion will be reviewed as well.

Councilman Smith said that it will be up to responsible business owners to make this work.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4151. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 92**

At 7:05 p.m., Mayor Bellamy announced a 20 minute recess, at which time a closed session would be held.

**Closed Session**

At 7:05 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; Roger Aly. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing payment of economic development incentives will occur in open

session. The statutory authorization is contained in G.S. 143-318.11(a)(4); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 7:37 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilman Pelly and carried unanimously.

**C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE MINOR AMENDMENTS TO GENERAL REGULATIONS RELATED TO MOBILE FOOD VENDING WITH NEW RESTRICTIONS FOR OPERATING IN BILTMORE VILLAGE AND AN AMENDMENT TO ARTICLE 5, CHAPTER 16 OF THE CODE OF ORDINANCES TO EXTEND THE HOURS OF OPERATION FOR PUSHCARTS**

**ORDINANCE NO. 4152 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE MINOR AMENDMENTS TO GENERAL REGULATIONS RELATED TO MOBILE FOOD VENDING WITH NEW RESTRICTIONS FOR OPERATING IN BILTMORE VILLAGE AND AN AMENDMENT TO ARTICLE 5, CHAPTER 16 OF THE CODE OF ORDINANCES TO EXTEND THE HOURS OF OPERATION FOR PUSHCARTS**

Urban Planner Alan Glines said that this is the consideration of an ordinance (1) amending to Chapter 7 of the Code of Ordinances of the City of Asheville to provide minor adjustments to the mobile food vending ordinance and add limitations to vending in the Biltmore Village Historic District; and (2) amending Chapter 16 of the City Code to extend the hours of operation for sidewalk pushcarts. This public hearing was advertised on December 28, 2012, and January 4, 2013.

The mobile food vending ordinance, primarily but not exclusively related to the use of food trucks downtown, was adopted late in the summer of 2011 and has been in place for over one year. When it was adopted City Council directed staff to come back after about a year to provide comments about how the ordinance has worked.

One main site for mobile food vending has been approved and is operating in the downtown area at 51 Coxe Avenue. The parcel was leased and took several months for site improvements to be completed (street trees and power service to operate the trucks). The ordinance allows a limit of 10 trucks to operate in the downtown Central Business District. In early November the tenth and final food truck received final inspection and approval for the site; so there are no more permits available in the downtown CBD unless a current operator lets their permit expire. The food truck lot appears to be successful but the food vendors have indicated that they would like to expand this operation into the evening and weekend hours. The operators are also interested in finding other sites in downtown to create an additional lot to expand the available work shifts. Locations are difficult to secure because it usually means displacing some other income-generating use on the lot such as surface parking.

The amendment proposed below was initiated by staff after review of the ordinance in preparation for the one-year anniversary of its passage. The current ordinance and proposed amendments have been reviewed and discussed with representatives of the downtown mobile food vendors, the Downtown Commission, the Asheville Parks and Recreation Department staff, the Historic Resources Commission (see below for additional input from the HRC) and with the Planning and Economic Development Committee. The Parks and Recreation Department did not feel that any changes were needed for operating at park sites, noting that aside from special

events there is not enough consistent demand to operate a food truck at a park location. The trucks are already allowed for special events.

The proposed changes are meant to address issues that have arisen during this first year of operation related to defining the use better, operational standards, and signage.

**Summary of Changes**:

**Definition**- The amendment would change the definition of mobile food vendor to include trucks that just serve drinks for example and don't contain a *kitchen*. (For example, we have seen several coffee trucks start operating.)

**Operation standards**- Changes are proposed to keep the ordinance in accord with recent new posting requirements from the Health Department; and a change is proposed for operating hours to allow mobile food vendors flexibility to maintain their schedules using social media or other mutually agreeable methods of notification.

**Signage** - The Mobile Food Vendors have requested an additional allowance for signage on their trucks. Flexibility in truck signage allows the truck to be recognizable in spite of the variety of locations that trucks vend from (trucks usually work from a variety of different venues).

**Biltmore Village Historic District:**

The Historic Resources Commission (HRC) recently conveyed their interest in adding limitations for operating food trucks in the Biltmore Village Historic District. Biltmore Village is commercially zoned and under the current wording in the ordinance there are no limitations for mobile food vending there. Currently a single truck is operating using a temporary use permit (allowing 180 days of operation per calendar year).

A Biltmore Village merchant, who is also the president of the Biltmore Village Merchants Association, became concerned about the mobile food vending operator and brought the issue to the Historic Resources Commission Director for consideration. After a number of meetings reviewing the topic it became apparent that the commissioners were closely divided on the issue. Some members of the Commission felt this activity to be out of character with the district's goals and the adopted *Biltmore Village Development Plan* while others did not feel that it would have a negative effect. It was apparent to Commission members that it would be difficult to apply design guidelines to the trucks since they are not structures for which the guidelines were written and such impermanent uses are not clearly within the parameters of the commission's work. There was discussion of expanding the aesthetic guidelines for the trucks (which might just focus on appropriate colors) but in the end this was not a part of the approved recommendation.

After substantial discussion, the HRC, at their meeting on 11/14/12, voted 6-4 (5 for, 4 against and one abstention) to continue to allow mobile food vending but with limitations similar to those established for the downtown Central Business District. The CBD restriction allows only ten trucks and no temporary use permits for mobile food vending. In Biltmore Village the staff recommends a limit of two trucks based on the small scale of the district and no temporary use permits. As required in downtown, trucks would have to establish a permanent location and provide limited site improvements (primarily street trees and sidewalk access). Trucks would also be required to provide electric power to the site instead of using generators in order to maintain the ambiance of the district. These limitations on the operation of food trucks would be waived in the case of special events which apply for approval under other permits (this same rule is true for downtown too).

Vocal opposition to allowing any mobile food vendors remains from a number of merchants and property owners in Biltmore Village, along with support from other merchants.

The Planning and Zoning Commission reviewed the amendments to the ordinance at their meeting on 12/5/12. Most of the Commission's discussion, beyond the general background questions about the details of the current ordinance, was centered on the ordinance to limit the mobile food vendors in Biltmore Village proposed by the Historic Resources Commission.

Two representatives of the Biltmore Village Merchants Association who said they represented about 27 property and business owners in the district, stated that they wanted the food trucks to be totally banned. They presented a petition to the Commission with signatures from many Village merchants. They are concerned that the trucks will erode the character of the district which is represented by the guidelines and their investment in property there.

The property owner of the business who is allowing the coffee truck to operate on his property spoke in support of allowing a few food trucks. He stated that the truck provides a needed service in the district and that the district is a commercial area and that he is supportive of the ordinance changes as drafted.

After receiving public comment there was lengthy discussion about the potential impact of having trucks in the district. As with the discussion at the HRC, some Commission members felt that aesthetic considerations should be taken into account in the district. It was clarified that State law only allows regulation for structures and other permanent features in historic districts based on federal regulations and that trucks would not be considered a structure. The zoning code in contrast could impose some aesthetic controls such as color of the trucks. There was interest by some on the Commission to encourage City Council to ask the Historic Resources Committee to consider aesthetic regulations that could come back as an amendment to the UDO ordinance. After a thorough conversation that included options for banning the trucks outright or allowing only a single truck, the Commission voted (5-1) to endorse the staff recommendation of allowing no more than 2 trucks under restrictions similar to those in the downtown CBD.

**Hours of Operation for Push Carts:**

In January 2012 a number of changes were approved by City Council concerning the operation and permitting of activities in sidewalk right-of-way areas. These activities included operation of pushcarts, outdoor dining, and outdoor merchandise sales. The changes were generally clarifications and related to encroachment consistency. During the course of the year, some pushcart operators came to a meeting of the Downtown Commission with two concerns: (1) they would like pushcarts included in all outdoor community events and festivals, with the exception of Bele Chere and not be required to vacate their sites; and (2) they would like the pushcart hours of operations be extended from 11:00 p.m. to 2:00 a.m. The Downtown Commission is looking into special events permitting at this time and asked that the pushcart operators to be involved in that process. The DTC recommend support for this request for the extension of the hours of operation with a vote of 8-0.

These proposed modifications comply with the City Council Strategic Operating Plan goals of job creation and community development by supporting diversified job growth but with reasonable regulations to assure a balanced approach to managing the communities where business activities take place.

Pros:

- Allows the ordinance to remain up to date to current standards and practices
- Moves to balance business enterprise with maintaining the special character of a key area of the city
- Allows the City code to remain relevant to adjustments in community interests

Cons:

- The nature of some ordinances is such that they require review and adjustment over time

- There remains debate in the community about the extent and nature of impacts from food trucks

City staff recommends City Council adopt (1) amendments to Chapter 7 of the Code of Ordinances of the City of Asheville to provide minor adjustments to the mobile food vending ordinance and add limitations to vending in the Biltmore Village Historic District; and (2) amendment to Chapter 16 of the City Code to extend the hours of operation for sidewalk pushcarts.

Mayor Bellamy opened the public hearing at 7:51 p.m.

Mr. Stan Collins, member of the Biltmore Village Merchants Association, was concerned that allowing mobile food vending units to occupy space in Biltmore Village will create a change to the overall image and overall visual character of the Village. That change would be counter to the established district guidelines. Visitors and locals come year after year to the village because it has appeal and retaining that image is critical to the life of the Village. The guidelines established in 1988 were to improve the market image and enhance the overall character of Biltmore Village. They wish to protect the property and values that people are looking to expect in the Village. From a historical prospective, food trucks can be incongruent with the strict historical guidelines that direct the businesses in the Village. The presence of food trucks in the Biltmore Village Historic District can undermine decades of careful monitoring of historic regulations. He felt that a mobile food truck constructed to look like the vehicles from 1900-1910 would be a wonderful draw.

At 7:56 p.m., Mayor Bellamy closed the public hearing.

In response to Councilman Smith, Mr. Glines explained (1) that there are not many potential locations in Biltmore Village due to the limited parking; and (2) how the two truck limit was arrived at.

Councilman Smith said that we've had food trucks around since the 1890's and because we don't have the preview to be able to have them look a certain way, he was inclined to allow the use and bring back the matter for review after a little time to play out.

Councilman Davis, who originally had concerns about mobile food trucks vs. bricks and mortar businesses, did not have those same concerns anymore. Now he feels like they contribute to the area and felt they may add to the flavor of Biltmore Village even though they are not historic looking.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4152. This motion was seconded by Councilman Smith and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 94**

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 13-8 - RESOLUTION DIRECTING SOLICITING PROPOSALS FOR PREPARATION OF FORM-BASED ZONING REGULATIONS FOR THE HAYWOOD ROAD CORRIDOR**

Planning & Development Director Judy Daniel said that this is the consideration of a proposal to authorize City staff to pursue consulting services to create a "form-based" land use regulatory code for one corridor area of the city.

Early in 2012, during budget discussions, the City Council indicated a desire to have Planning staff select a consultant for work on a "first phase" or "demonstration" project using Form Base Coding for one area of the City. The Council decided to wait until closer to the end of the year to determine whether to direct staff to move forward on that project; directing staff to return to the Planning and Economic Development (PED) Committee for direction.

During the discussion, the City Council expressed a desire for this project as an element in its ongoing efforts to move toward more sustainable development patterns. The Council, since the adoption of the 2025 Comprehensive Plan, has increased its commitment to methods of accommodating growth that are more fiscally and environmentally sustainable than the patterns that prevailed since the middle of the 20th Century. This project will be an important next step toward the central themes of sustainability and resiliency that have become increasingly important to city leaders. A selected consultant team would work with city staff, the general public, interested stakeholder groups, a City Council-appointed Steering Committee, the Planning and Zoning Commission and other relevant boards and commissions, and the City Council.

The amount identified by the Council for this initial project was up to $100,000. During the discussion the staff noted that initial research into this type of project advised that it is very likely that this amount would not be sufficient to fund a complete project unless the area chosen is quite small (although we will not know this for sure until the RFQ proposals have been evaluated). Depending on the size of the area chosen for this project, the Council may wish to consider the "first phase" to be the visioning and planning element, with an earmark for next year to complete the final product of an adoptable code for the chosen area.

As directed, staff talked with the PED Committee in November about options for a Form Base Code project. After discussion, the PED members directed staff to return to the Council in January with two alternative proposals to consider – one in the River District, and one along Haywood Road in West Asheville. These two areas were chosen because they offer contrasting opportunities in two areas that are experiencing growth and considerable change and thus offer the likelihood that the new code would begin to be implemented soon after its adoption. The substantial investment to create this new regulatory structure should be in an area likely to see substantial ongoing investment in this decade. These areas also represent potential for replicating the code structure in other locations with similar characteristics. If the City plans to move toward such coding for more areas of the City in the future, selection of a pilot area with potential for replication would be a good first step.

Staff met soon after that meeting to discuss ideas for these two options. Each offers different but important advantages and limitations. Each represents areas where change has been dramatic and ongoing, even during the past several years of low economic growth; with more change is anticipated.

An initial general thought was that it would be easier for the West Haywood community to agree on the "form" they wished to preserve and enhance; but given the accelerating pace of larger scale change in the River District, it might be more important to work on agreement for a new "form" for that area. Staff also realized that with the newly awakened interest of residents along the west side of the French Broad River, it might be important for the study area to include that part of the River District – including Haywood Road from the river up to Beecham's curve.

The River District has seen an increasingly rapid pace of changes and planning efforts in the past few years. A project centered there could be a central catalyst capitalizing on all that input and creativity. While not as replicable as West Haywood, the project recommendations

would have applicability in the Swannanoa River Corridor area around and west of Biltmore Village. In addition, the River District has already seen substantial public investment in recent years (such as the East of the Riverway work and the RADTIP study), and is facing a faster rate of change while dealing with more complex issues of adjustment as it evolves from an industrial past into a mix of retail, entertainment, residential, and arts uses, while retaining elements of industrial uses. The added investment of regulatory code that complements that work is likely to provide added leverage and additional investment from the public and private sectors.

In contrast, an advantage of West Haywood is that a "form" pattern built for that area would lend itself to being replicated in other older urbanizing neighborhood corridors of the city. West Asheville already has a general form (moderate density urban neighborhood scale, with strong adjoining neighborhoods).

The choice for Council will be between a somewhat less complex effort along West Haywood, where desired form for development already has more general support (due to planning efforts in the past few years); or a more complex effort in the River District. In that area, determination of agreement on form may take more initial effort, but flood concerns pose unique challenges that a form code could address. In the River District, establishment of a central vision (with a lot of flexibility for creative entrepreneurs), would likely become a catalyst for further exciting change in the ongoing evolution of this central spine for the city and the region.

With those considerations in mind, the staff recommends that the Council authorize a Request for Qualifications (RFQ) for a Form Base Code Project for either:

A. A portion of the northern section of the River District (Clingman at Depot Street down to and including the bulk of the RADTIP study area, and west along Haywood Road from the French Broad River to Beecham's Curve, north along Riverside Drive to the railroad overpass, and south along Depot Street to the Grant Center); or

B. Haywood Road from the French Broad River west to its intersection with Patton Avenue.

The consultant for this project would work with the selected community area to develop an agreed vision of what elements of form and design would be desired as these areas are built out; and the creation of an overlay code for the corridor that modifies the zoning to achieve that form as the "default" development pattern. The creation of this type of code involves substantial initial public input during the "visioning" process; followed by detailed design work on the part of the consultant to create the code – which is oriented toward specific design requirements, rather than traditional standards such as density limits, setbacks, and height restrictions.

The $100,000 amount available will influence the amount of work that can be accomplished. Staff recommends that it is important for the funding to include actual governing code, not just a plan for that code. If cost estimates from consultant are higher than anticipated, the staff would recommend either narrowing the proposed area so a complete section with code can be completed; or consideration of this initial work as the visioning plan phase only with a commitment to fund the completion of the work and code in the next fiscal year. (For comparison purposes, the city of Austin, TX recently sent an RFQ for the creation of form based code for much of the entire city, allocating up to $2 million for the project.)

This action will work toward achieving goals in multiple elements in the Council Strategic Goals including Fiscal Responsibility, Affordable, Green and Sustainable, Job Growth and Community Development, and Multi-modal Transportation.

There would be no immediate fiscal impact from this decision other than staff time involved in completing and posting the RFQ and reviewing the applications. If a contract is awarded, a commitment of up to $100,000 from the General Fund would be required for consultant services in addition to staff time required to work with the public and the consultant.

Councilman Davis felt that both projects have good merits. The opportunity lies in the River District because that will need the planning for further development, but Haywood Road is something more usable in other districts in the future. In addition, there has been a lot of work done on the Haywood Road corridor.

In response to Councilman Davis on whether the $100,000 would be adequate to cover the entire project in the River District, Ms. Daniels said that the River District would be a more complex process and probably use up more of the funds on the visioning process than Haywood Road would. It would take more money to do the River District unless you wanted to do it a couple of blocks at a time.

Councilman Bothwell felt we might not see much change on Haywood Road with the established businesses in the old buildings along much of the commercial corridor. The form based code might be in place but not have any effect for decades. Ms. Daniels said that during the recession we have seen existing buildings reformed and reused. The core is built up and the areas you might see new development is on both areas of the core.

When Mayor Bellamy asked if we are talking with any developers for the Haywood Road corridor, Urban Planner Alan Glines said that the Haywood Village property is for sale and last year he spoke with potential buyers. People have also been looking at some under utilized properties along the corridor and considering new things. There is, at this time, a lot of renovations and not so much the new construction yet.

Mayor Bellamy felt we should work hand in hand with the developers during this RFQ process to get them bought into the process. She wanted to make sure that this is a good investment and that we will see some buildings constructed to the form we are developing.

When Mayor Bellamy asked for this to be included in our strategic plan updates, City Manager Jackson said that the process is to select the person to put together a project plan and schedule and that will come to Council in the form of authorization of a contract so Council will see the scope of services and schedule at that time.

Councilman Smith supported the Haywood Road area because the Haywood Road vision plan has been going on for a number of years and there have been a lot of voices involved. This would be a capstone for that process. Because of the number of voices already involved he felt this will be a shorter process than in the River District. Also, Haywood Road is relevant because we are seeing a lot of east-west Asheville growth issues occurring now.

The following individuals supported the Haywood Road area model for various reasons, mainly those outlined by Council:

Ms. Pattiy Torno, Chair of the Asheville Area Riverfront Redevelopment Commission, Member of WECAN Neighborhood Association; founding member of the River Arts District
Ms. Emily Goodwell, west Asheville resident
Ms. Leslie Fay, west Asheville resident

Vice-Mayor Manheimer moved to adopt Resolution No. 13-8. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 - PAGE 156**

**B. POLICY DIRECTION FOR THE DISPOSITION OF CITY-OWNED PROPERTY AT 91 RIVERSIDE DRIVE KNOWN AS THE ICE HOUSE**

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**RESOLUTION NO. 13-5 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH TAYLOR & MURPHY CONSTRUCTION COMPANY INC. FOR THE DEMOLITION OF THE STRUCTURE LOCATED AT 91 RIVERSIDE DRIVE KNOWN AS THE ICE HOUSE**

**ORDINANCE NO. 4153 - BUDGET AMENDMENT FOR THE DEMOLITION OF THE STRUCTURE LOCATED AT 91 RIVERSIDE DRIVE KNOWN AS THE ICE HOUSE**

Vice-Mayor Manheimer said that her firm does represent Taylor & Murphy Construction Company, and at the direction of City Attorney Oast, she will recuse herself, due to a conflict of interest, from voting on the resolution and ordinance. City Attorney Oast said that Vice-Mayor Manheimer can and should participate in the policy direction discussion.

Riverfront Redevelopment Coordinator Stephanie Monson Dahl said that this is the consideration of policy direction for the disposition of a structure(s) in the River Arts District known as the Ice House.

The City of Asheville purchased the Ice House property at 91 Riverside Drive, PIN #9638973694, on November 30, 2012. The purchase includes 2.2 acres of open space on the French Broad River and approximately 1 acre of developed property on the east side of Riverside Drive where an approximately 50,000 square foot building known as the Ice House is situated. The structure is generally characterized as being:

- Significantly dilapidated, unsafe, and the site of a substantial level of criminal activity, requiring City's compliance with Chapter 4, Article 6 of the Unified Development Ordinance regarding unsafe buildings.

- A contributing structure to the Riverside Industrial Historic District, potentially eligible for historic tax credits if rehabilitated with some level of negative impact to the collection of historic industrial buildings if demolished.

- Located on a parcel integral to the revitalization of the region's riverfront, being strategically located in the River Arts District Transportation Improvement Project (RADTIP) Area, the East of the RiverWay Area, and the Between the Bridges area.

Due to its poor condition, a decision on the immediate disposition of the structure needs to be the first step by Council towards a final decision on the highest and best use of the property. The policy options for the structure presented in this staff report include: delay of a decision, long term retention and preservation of building, immediate demolition, or other Council option.

Staff suggests the next step in Council's evaluation of this site should be consideration of the community's stated vision and goals, and a professional engineering and financial analysis, to be created in the spring and summer of 2013 via the Riverside Drive Strategic Plan process. That process is being funded by Council's $50,000 allocation of Federal Tiger II grant funding from the East of the RiverWay Transformation Development component; aimed at transforming underutilized city-owned property into assets of regional significance.

After that process is complete and recommendations are presented, it is anticipated that Council will be asked to adopt a resolution on a preferred redevelopment plan for the area, to provide direction on the redevelopment process desired to achieve that plan, and whether staff should align that process with the bidding and construction of the RADTIP.

<u>Policy Options for Disposition of the "Ice House" Structure:</u>

*1) Delay of Decision on Disposition (to a Later Date)*

Council could opt neither to immediately demolish the building nor to immediately "mothball" the building for historic preservation. The purpose for making this decision would be to give Council additional time to determine if other information or resources regarding a more preferable option have yet to be brought to Council's attention.

Next steps would include:

- Extension allowing delay of compliance with the unsafe building ordinance
- Staff performance of additional due diligence regarding additional policy options
- Direction from Council regarding timeline for staff due diligence and Council decision on disposition

Pros:

- Forestalls or prevents demolition, to which some constituents are opposed.
- Gives Council more time to make a decision.

Cons:

- Requires continued outlay of resources and funding to secure the building and the surrounding area.
- Negatively impacts the physical appearance of the area, which could continue to encourage crime and detract from private investment.

Fiscal Impact: Staff estimates it will cost an initial $12,000 to $15,000 to provide an acceptable level of short-term security for the building and the site. This does not include staff time devoted to increased patrols, or resources used for coordination of efforts and use of city labor to secure building. The extension of this plan from a short term, interim (60-day) option to a six-month option or longer would not be recommended without additional physical improvements to the building itself. Because of this, it is estimated that for every six months, this option would cost $50,000 to $60,000.

*2) Long Term Retention/Preservation of Building*

Council could opt to "mothball" (repair, secure, and preserve for a use in the future) the building in hopes of attracting a redevelopment partner interested in historic preservation at some future date. The purpose of making this decision would be to prioritize the historic preservation of this building more than other redevelopment goals for riverfront revitalization.

Next steps would include:

- Short term extension of compliance with unsafe building ordinance
- Staff analysis of the process for mothballing this specific building (parallel tracked with extension of compliance)
- Council approval of funding to mothball the building.
- Further Council direction regarding the desired process for soliciting a qualified redevelopment partner.

Pros:

- Adaptively reuses a contributing building to a National Historic District/avoids demolition.
- Retains potential for private sector use of historic tax credits if redeveloped to accordance with federal or state standards.
- Physical appearance could be an improvement over the "delay of decision" option.

Cons:

- Minimizes the long-term redevelopment options on the site.

- Minimizes or negates use of site for short-term temporary uses that could support revitalization.
- Requires substantial financial commitment from the Council without any guarantee that a viable reuse will be found in a reasonable timeframe.
- Likely partners for reuse may look to the City for substantial additional financial contributions; and given the condition of the structure, the types of uses for which it is a viable use are limited.
- Supports building vacancy in an area where City is heavily invested in revitalization efforts.

Fiscal Impact: Minimum cost to the City to "mothball" the building is estimated at $180,000; however, this estimate does not include continuing security and maintenance of the existing structure from today until a redevelopment partner is found.

*3) Immediate Demolition*

Council could opt to pursue a contract to demolish the 50,000 square foot structure while preserving and securing the iconic smokestack. The purpose for making this decision would be to prioritize public safety while still allowing for the promotion of urban infill and new construction to promote riverfront revitalization; while preserving a visible element (and the most architecturally interesting portion) of the historic industrial past.

Next steps would include:

- The authorization for staff to execute a contract for the demolition for the building
- Further Council direction regarding staff's suggested process for Council's continued consideration of the highest and best use of the property

Pros:

- Immediately eliminates the hazards associated with the building's condition and fulfills the unsafe building ordinance requirement.
- Allows the developable portion of the site to support interim uses aligned with revitalization of the riverfront, such as temporary commercial or special event uses or parking for the same and for business accessibility or riverfront recreation
- Provides a shovel ready site for developers looking to partner with the City on new construction

Cons:

- Eliminates a contributing building to the National Riverside Industrial Historic District, meaning any potential future use of historic tax credits are lost upon demolition
- Option eliminates a historic asset reflecting the cultural history of Asheville pre-World War II

Fiscal Impact: Staff proposed to use the parking fund to implement this proposal if directed. The Parking Fund ended FY 2011-12 with available fund balance (in excess of the 8% policy target) of $1,161,762. At its October 23, 2012 meeting, Council approved the appropriation of $825,000 from Parking Fund fund balance for property acquisition. Council would be asked to approve an additional $225,000 for demolition, leaving approximately $110,000 in available fund balance remaining in the Parking Fund. The current bid for demolition is approximately $145,000. Staff expects to use the difference to abate asbestos within the building, secure and preserve the iconic smokestack, and do minimal site repair.

*4) Other Option*

Council may opt to direct staff to pursue a policy direction for the disposition of the building that is not supported by staff analysis but is preferable to Council. Staff is aware of citizen suggestions to reuse of the building for purposes like a museum, artist live-work spaces, or housing for people experiencing homelessness. Staff assessment is that the building's internal design and type of construction coupled with its substantially deteriorated state realistically negates any suitable or fiscally responsible rehabilitation proposals. A more detailed discussion of the consequences of pursuing a museum project can be found in the document "Supplemental Memo" which can be accessed via the link on Attachment C- Redevelopment Planning Considerations.

Staff review suggests that while all policy options could address some Council goals, option #3, Immediate Demolition, provides Council with the opportunity to most clearly address the following:

- Fiscal Responsibility: leverages City's opportunities to partner with private developers to implement master plans
- Safe: significantly improves public safety of the River Arts District and surrounding neighborhoods
- Job Growth and Development: promotes infill growth using existing corridors, and promotes riverfront revitalization.

The River District Design Review Committee met on December 5, 2012, and declined to vote on an advisory position to Council because a straw poll of members showed no consensus could be made. The Asheville Area Riverfront Redevelopment Commission met on December 13, 2012, and voted 11-1 to advise Council to authorize the demolition of the building.

Although existing policies seem to align most clearly with the demolition option, given the many facets to consider, the staff asks for Council direction. If Council chooses to immediately demolish the structure, staff recommends that Council 1) authorize the City Manager to sign a contract for the demolition of the structure located at 91 Riverside Drive, and 2) approve a budget amendment in the amount of $225,000 from Parking Fund fund balance to fund the demolition expenses.

Councilman Bothwell heard the arguments about preservation of the building, but he hasn't understood what the value of the building might be. A substantial structure like the Ice House would be extremely expensive to build new. He wondered if we mothball it for $180,000, would we be preserving a million dollar building. His sense is we shouldn't tear down something that there is a substantial significant investment in if there is a chance for reusing it somehow. The building substantial has value, but we don't know who it would have value to yet.

Mayor Bellamy's concern about deferring it is that we have had the Flying Frog building for many years and not done well by it. We have other issues that are more pressing. When she was told about the purchase, it was for a roadway improvement. She felt it's time for us to move forward if we embrace the RADTIP. It would be very costly for us to rehabilitate the building and if there are people who wanted to do it, it would have been done.

Councilman Davis explained that Asheville Area Riverfront Redevelopment Commission looked at this property several years ago and some travelled to Chattanooga to look at a transformational project for the river. Mr. Terry Meek came up with a good concept of a riverfront museum and shared that concept with others for the building. However, the building has a lot of problems and the private sector has not come forward. It seems a terrible loss to tear the building down, but he didn't thing there was enough there to salvage to make it worthwhile.

Councilman Smith agreed that Mr. Meek's vision was good and if we were in a better economic time it would have been worth pursuing. His chief concern is around safety in the building. Hopefully we can preserve the smokestack and the integrity of that structure is such

that we can do so. In addition, he would also like to ask, since the building is a contributing structure in the area and has so much history, the HRC to begin work on some kind of historic marker on that site.

Mr. Luke Perry, representing the West End/Clingman Avenue neighborhood, read a letter noting that few options are left for the Ice House. Residents are concerned about the loss and deterioration of significant historic structures in their neighborhood and hope that a renewed effort can be harnessed between public, private and civic partners to create the vision and funding to give new life to these structures before we are faced again with demolition. If Council moves forward with the demolition, WECAN recommends: (1) every effort is made to preserve and save any existing significant historical elements of the building, including the large brick chimney, any old remaining machinery, etc. for future reference; (2) a kiosk or informational display that references historical information about the history on the site of the building; (3) demolition contractor to have at least one employee working in the demolition who resides in one of the surrounding neighborhoods and to work with Green Opportunities to ensure that this occurs; and (4) City remain in constant and open dialogue with the public and surrounding neighborhood about the future development possibilities of the Ice House and consider how this site and those around it can engage and create productive public spaces that reference the exceptional history of the riverfront area and surrounding residential community.

Mr. Matt Sprouse, President of the River Arts District Business Association, explained their mission and because of the health and safety issue, they ask the City to demolish the Ice House and make every effort to preserve the smoke stack. He also asked for a kiosk and preservation of any other parts of the building to show the history of the area.

Mr. Terry Meek, Chair of the River District Design Review Committee and member of the Asheville Area Riverfront Redevelopment Commission; said he was speaking as an individual. He appreciated the vision of the City in purchasing the building. It's an important piece of property and urged the Council to look at this from a long-term standpoint - not just what is most convenient now. He met with City Council previously and conveyed his idea of a French Broad River Museum of Cultural and Natural History in that building, but that is not the only idea for the building. He believes the building still has great merit. He urged Council to not demolish the building because the City has already placed an RFQ for a strategic planning initiative for this area, which this building is a part of. He asked that Council postpone the action at least until it can be a part of this strategic planning initiative.

In response to Mr. Timothy Sadler who wondered if the property might work for a food processing facility, Councilman Smith said that it would not be cost effective for this building.

At 9:05 p.m., Mayor Bellamy closed the public hearing.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and the ordinance and they would not be read.

Councilman Smith moved to demolish the Ice House property, with the preservation of the smokestack and a historical marker. This motion was seconded by Vice-Mayor Manheimer and carried on a 5-1 vote, with Councilman Bothwell voting "no".

Councilman Bothwell moved to recuse Vice-Mayor Manheimer from participating on the vote of the resolution and budget amendment, due to a conflict of interest. This motion was seconded by Councilman Smith and carried unanimously.

Councilman Smith moved for the adoption of Resolution No. 13-5. This motion was seconded by Councilman Pelly and carried unanimously (Vice-Mayor Manheimer was recused).

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Councilman Smith moved for the adoption of Ordinance No. 4153. This motion was seconded by Councilman Pelly and carried unanimously (Vice-Mayor Manheimer was recused).

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City Manager Jackson said we are asking property owners to better secure their properties to prevent public safety issues. We don't want to lose all the character of the area.

**C. RESOLUTION NO. 13-6 - RESOLUTION APPROVING A HOUSING TRUST FUND LOAN TO BEAUCATCHER PROPERTIES LLC (SCATTERED SITE) AND GIVENS ESTATES INC. (GIVENS PARK APARTMENTS)**

**ORDINANCE NO. 4154 - BUDGET AMENDMENT TO PROVIDE SUFFICIENT BUDGET AUTHORIZATION FOR ALL LOAN DISBURSEMENTS**

Community Development Analyst Randy Stallings said that this is the consideration of a resolution authorizing approval of Housing Trust Fund loans to Beaucatcher Properties, LLC (Scattered Site) and Givens Estates, Inc. (Givens Park Apartments); and a budget amendment in the amount of $330,000 from Housing Trust Fund reserves to provide sufficient budget authorization for all loan disbursements anticipated to occur prior to June 30, 2013.

Staff received two (2) applications for HTF funding totaling $420,000. These applications were presented to the Housing and Community Development Committee (HCD) on December 13th and each was evaluated on its own merit. Including projected income from regularly scheduled payments to the Housing Trust Fund expected prior to fiscal year-end, resources are sufficient to approve both applications at the amounts requested. The total amount of fund resources, including the current cash balance and projected revenues thru June 30, 2013, is $436,890.90.

The following applications have been recommended by the HCD for approval:

1) Beaucatcher Properties LLC for the construction of an 8-unit scattered site rental development in the Shiloh neighborhood in South Asheville, $150,000.
2) Givens Estates, Inc. for construction of 120 units of multifamily housing for seniors on Gerber Rd, $270,000.

<u>Beaucatcher Properties, LLC – Shiloh Scattered Site $150,000.</u>

Mr. Kirk Booth, representing Beaucatcher Properties, has proposed an 8-unit single family rental development project in the Shiloh neighborhood in South Asheville. The developer will be purchasing two lots, one at 9 Marigold Street (PIN no. 964793621700000) and another on Chapel Park Place (PIN no. 964794966500000). Each of the lots will be subdivided into two (2) lots. Each of the four (4) new lots will contain a 2-bedroom single family home with a 1-bedroom accessory apartment over a rear garage. Both parcels are currently zoned Residential (RS-8). The single family homes will be rented at 80% of the Area Median Income and the 1-bedroom accessory units will be rented at 60% of the Area Median Income. The total land acquisition cost is $39,500.

The developer is seeking $150,000 with 50% of the Note ($75,000) due as an amortizing loan over 30 years at 4.5% interest. In recognition of the four (4) units serving populations at or below 60% of the Area Median Income, the developer is requesting that the remaining 50% of the Note ($75,000) be financed as interest-only at 2% interest with principal deferred for 20 years.

The site is infill development in an older established neighborhood with water and sewer access available. The proposed project meets the stated priorities in that 50% of the units will be

1-bedroom. Due to the small development size, no TRC or P&Z review will be required. The developer is ready to proceed immediately. The developer indicates a total projected development cost of $637,500, which includes the projected future value of the lots as developed.

The loan request represents 24% of the total development costs. The per-unit subsidy is $18,750. The total per-unit development cost as submitted by the applicant is $79,688 per unit. The cost per square foot is $97.32. The project is within 1/4 mile of transit. None of the units will be ADA accessible. The project will not be Energy Star certified but does incorporate many of the desired elements such as energy star appliances, low-e windows, and low-flow water systems. The developer has agreed to reserve two (2) of the eight (8) units for persons transitioning from homelessness.

Pros:

- Infill development supports strategic planning goals.
- The developer has completed other local projects in a timely manner.
- Developer is pledging 30 years of affordability.
- Units will serve families transitioning from homelessness.

Cons:

- The City financing when combined with the proposed senior bank lien provides 100% financing with no cash investment from the developer.
- Staff's analysis of the financial statements suggests that the project can absorb fully performing debt. Interest-only payments do not appear necessary for project viability.

Givens Estates, Inc. – Givens Park Apartments $270,000

Givens Estates has proposed a 120-unit multifamily rental development for seniors ages 55 and over in South Asheville. The proposed site is located directly behind Gerber Village, just east of Hendersonville Road (PIN no. 965526468400000). The 6.0 acre parcel received a conditional zoning to Highway Business in April of this year. An additional 120 units are planned for a future phase but are not under consideration at the present time. The proposed project will consist of 94 1-bedroom units and 26 2-bedroom units. The developer has noted that 30 of the units will be reserved for persons at or below 30% of the Area Median Income. The remaining 90 units will be rented to persons at or below 60% of the Area Median Income. Transit is available within ¼ mile. The total projected development cost is $14,043,335

The developer has requested $270,000 at 2.00% interest, fully amortizing for 30 years. The developer is applying for Low Income Housing Tax Credits which will significantly leverage the City investment. The land acquisition cost is $1.3 million. The per-unit development cost is $117,027. The cost per square foot is projected at $147.13. The requested per-unit subsidy is very low at $2,250. The loan request represents only 1.9% of the total development costs. The project will be Energy-Star certified. All units will be ADA compliant.

The projects directly support the City's Strategic Operating Goals: (1) *Affordable*: The project proposals are supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville; and (2) *Sustainable*: The proposed projects provide new housing units located near transit lines, higher urban development densities, and encourage higher standards of energy efficiency. The projects also address the priorities of the Consolidated Strategic Housing & Community Development Plan by increasing the housing stock, providing affordable rental units, building high quality energy-efficient housing, and coordinating development with transportation and jobs.

The current balance in the Trust Fund is $359,700.90. If the regularly scheduled loan repayments of $77,190 are received as expected, then there will be no adverse fiscal impact. Although highly unlikely, if future revenue projections prove incorrect then funds may not be available for disbursement until the fund has been replenished; either through a new

appropriation or the receipt of future program revenue beyond July 1, 2013. As noted above, a budget amendment in the amount of $330,000 from Housing Trust Fund reserves is included to provide sufficient budget authorization for all loan disbursements anticipated to occur prior to June 30, 2013

The Housing and Community Development Committee recommends City Council approve a resolution approving the following loans subject to the developers meeting all program requirements for loan closing:

1. $150,000 to Beaucatcher Properties, LLC for the development of Eight (8) single-family rental units on Marigold St and Chapel Park Place; conditioned on obtaining site control at Chapel Park Place; to be made immediately available for disbursement following loan closing.

   a. $75,000 to be repaid as a fully amortizing loan at 4.5% interest for 30 years.
   b. $75,000 to be repaid in annual interest-only payments at 2.00% interest with principal deferred for a term of 20 years.

2. $270,000 to Givens Estates, Inc. for the development of One Hundred and Twenty (120) multifamily rental units for seniors on Gerber Road, amortized at 2.00% interest for 30 years; to be made immediately available for disbursement following loan closing.

When Mayor Bellamy felt that local people should have the opportunity to take advantage of the units in Givens Estates, Mr. Ken Parton, representing Givens Estates, said that he could say that all admissions will come from people in this community; however, they only advertise up to 30 miles from Asheville. From their market research, they anticipate this project being filled from people in the Buncombe County area. He also noted that they hope to build common space and make it available to people in the community.

Mayor Bellamy asked Council to support her request, especially since there are local tax dollars in the project, that local people have the opportunity to avail themselves of this top notch facility, knowing that it already has a long waiting list. She was concerned that once it is constructed it will already be filled up. Mr. Stallings noted that the low income housing tax credit prohibits discrimination in the leasing process.

On behalf of City Council, Mayor Bellamy thanked Mr. Stallings for his work with the City of Asheville as he continues on with his career.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and the ordinance and they would not be read.

Councilman Smith moved for the adoption of Resolution No. 13-6. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 154**

Councilman Smith moved for the adoption of Ordinance No. 4154. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 99**

**D. RESOLUTION NO. 13-7 - RESOLUTION ALLOCATING FAIR HOUSING ASSISTANCE PROGRAM FUNDS TO THE ASHEVILLE BUNCOMBE COMMUNITY RELATIONS COUNCIL**

City Manager Jackson said that this is the consideration of a resolution approving $15,000 in federal Fair Housing Assistance Program funds to the Asheville Buncombe Community Relations Council to continue to implement fair housing research, outreach and training.

The Asheville Buncombe Community Relations Council requests $15,000 in Fair Housing Assistance Program funding to continue to perform fair housing research, training and outreach.

In July of 2012, Council provided $15,000 of HUD Fair Housing Assistance Program funds to ABCRC. ABCRC has used these funds to reinstate its position as the first agency point of contact for Asheville residents who have fair housing concerns, and to lead the community work to educate and inform Asheville residents about their fair housing rights and recourse if those rights have been violated. After completing Phase I of their Fair Housing Outreach program, they would now like to initiate Phase II. During this next phase they would continue to employ a contract worker to implement and facilitate their outreach plan, facilitate and recruit volunteers for trainings and events, provide fair housing client intake and referral, provide conflict resolution services, continue to network with community organizations, and provide outreach and community engagement. They wish to attend at least one National or State training, research fair housing compliance recertification options with HUD and work closely with NC Human Relations Commission on referral of cases.

The organization has made significant progress in restructuring its Board of Directors and Committees, has begun work on a new strategic plan, and has created new fair housing outreach materials. It has not yet reached a resolution with the IRS regarding penalties due to late payment of withholding taxes and interest, but is making all required payments. It is current on all day-to-day obligations.

The project directly supports the City's Strategic Operating Goal of *Affordable*: The project proposal is supportive of the City's goal for all citizens to have access to safe, sufficient and affordable housing.

Pros:

- ABCRC is reestablishing a local point of contact for fair housing information for consumers and agencies.
- Fair housing training will assist private and public sector landlords comply with the law.
- ABCRC has developed a collaborative working relationship with the NC Human Relations Commission, Pisgah Legal Services, and other key community service agencies.

Cons:

- Role for local agency dedicated to fair housing not yet clear, and recertification does not appear to be a HUD priority in the short term;
- Agency relies almost exclusively on public sector financial support.
- Tax liability remains unresolved.

The federal FHAP funds must be allocated to affirmatively further fair housing. The use of the funds for the proposed purpose meets that requirement. The funding will come from the FHAP budget that was approved in FY11-12. If this allocation is approved, $2,316 of FHAP funding will remain to be allocated. No additional FHAP funds will be received by the City of Asheville from HUD. There is no impact to the General Fund.

The Housing and Community Development Committee recommends the approval of $15,000 in federal Fair Housing Assistance Program funds to ABCRC to continue to implement fair housing marketing, outreach and training, as proposed.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 13-7. This motion was seconded by Councilman Gordon and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 155**

**BOARDS & COMMISSIONS**

Regarding the Downtown Commission, the following individuals have applied for the vacancies: Edward Loewe, Patric Mullen, Karl Katterjohn, Dean Pistor, Laurie Miller, Andrew Montrie, Adam Bowers, Luther Smith, Dane Barrager and Larry Holt. It was the consensus of Council to reappoint Bruce Hazzard, Rebecca Hecht and Matthew Sprouse and postpone the final vacancy for further clarification.

Regarding the Greenway Commission, the following individuals have applied for the vacancies: Stuart Smith, Bryan Mitchell, Forrest Patrick Merithew, Adam Bowers and Luther Smith. It was the consensus of Council to reappoint James Grode and postpone the final vacancy for further information.

Regarding the Sustainable Advisory Committee on Energy & the Environment, the following individuals have applied for the vacancies: Peter Brezny, Marcus Renner, Lawrence Pittman, Alan Watts, Brandee Boggs, Melita Kyriakou, Stuart Smith, Timothy Sadler, Josh O'Conner, Forrest Patrick Merithew, Sabrina Wells, Christine Laporte and Robert Brady. It was the consensus of Council to reappoint Torin Kexel and interview Marcus Renner, Brandee Boggs, Lawrence Pittman and Josh O'Conner.

Regarding the Transit Commission, the following individuals have applied for the vacancies: Bruce Emory, George E. Keller, Itiyopia Ewart and Bryan Mitchell. It was the consensus of Council to (1) reappoint Julie Mayfield and Tom Tomlin; (2) appoint Bruce Emory; and (3) interview Itiyopia Ewart and George Keller. The Boards & Commissions Committee did not recommend reappointment of Ms. Georgia Shannon due to the failure to meet attendance requirements.

Regarding the Tree Commission, it was the consensus of Council to re-advertise due to the lack of applicants for available seats.

**RESOLUTION NO. 13-9 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing alternate members to the Board of Adjustment.

The terms of Richard Fort (Alternate) and Phillip Hardin (Alternate) expire on January 21, 2013.

The following individuals have applied for the vacancies: Derek Weekley, Jay Marino and Mary Jean Burgin.

It was the consensus of the Boards & Commissions Committee to reappoint Mr. Fort (Alternate) and Mr. Hardin (Alternate).

Councilman Smith moved to reappoint Richard Fort (Alternate) and Phillip Hardin (Alternate) to the Board of Adjustment to each serve an additional three-year term, terms to

expire January 21, 2016, or until their successors are appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 157**

**RESOLUTION NO. 13-10 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Metropolitan Sewerage District Board of Directors.

The term of Councilman Chris Pelly expired on January 19, 2013.

No following individual applied for the vacancy.

It was the consensus of the Boards & Commissions Committee to reappoint Councilman Pelly.

Councilman Smith moved to reappoint Councilman Chris Pelly to the Metropolitan Sewerage District Board of Directors to serve a three-year term, terms to expire January 19, 2016, or until his successors is appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 158**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Timothy Sadler commented on the energy costs that our City is facing. He urged Council to adopt a resolution stating it's the City's intention to become energy independent.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 9:27 p.m.

Magdalen Burleson
CITY CLERK

Jan M. Bellamy
MAYOR

Tuesday – January 22, 2013- 5:00 p.m.

Regular Meeting

Present: Vice-Mayor Esther E. Manheimer, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Terry M. Bellamy (illness)

**PLEDGE OF ALLEGIANCE**

Vice-Mayor Manheimer led City Council in the Pledge of Allegiance.

**INVOCATION**

Vice-Mayor Manheimer gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING FEBRUARY 2013 AS "BLACK HISTORY MONTH"**

Councilman Bothwell read the proclamation proclaiming February, 2013, as "Black History Month" in the City of Asheville.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 8, 2013**

**B. RESOLUTION NO. 13-11 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR IMPROVEMENTS ON 8-26 AT EXIT 40**

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N.C. Dept. of Transportation approving a project for making improvements on I-26 at Exit # 40, which is the interchange with NC 280 (Airport Road) at the Asheville Regional Airport.

The N.C. Dept. of Transportation (NCDOT) plans to make improvements on I-26 at Exit # 40, which is the interchange with NC 280 (Airport Road) at the Asheville Regional Airport. The project, which is identified as I-5501, has a letting date of September 17, 2013. The improvements include grading, drainage, paving, and traffic signals to retrofit the existing interchange to a diverging diamond configuration. As a part of the agreement, the City agrees to effect the necessary adjustment of any utilities under franchise without cost to the NCDOT and to provide for the adjustment of any municipally-owned utilities without cost to the NCDOT, except that the NCDOT will reimburse the City in accordance with the NCDOT's Municipally-Owned Utility Policy. These requirements are standard requirements in all of NCDOT's Municipal Agreements and may or may not be applicable for a specific project. The City's Water Resources Department has reviewed the agreement and understands that there will be some water utility construction as a part of the project that is the responsibility of the Water Resources Department. At this time, the cost of the work is estimated to be about $400,000 and a separate utility agreement will be prepared at a later date.

This action complies with the City Council Strategic Operating Plan in the Fiscal Responsibility Area by partnering with the North Carolina Department of Transportation (NCDOT) to make improvements to the existing street infra-structure.

Pros:

- An existing diamond interchange will be improved to increase traffic flow efficiency.
- The NCDOT is funding and constructing the project.

Con:

- The City's Water Resources Department is responsible for some water utility construction at an estimated cost of $400,000.

The City's Water Resources Department is responsible for some water utility construction at an estimated cost of $400,000. Funding is included in the existing Water Department's Capital Improvement Program for this project.

Staff recommends that City Council approve a resolution authorizing the City Manager to sign a municipal agreement with the NCDOT formally approving Project I-5501.

**RESOLUTION BOOK NO. 35 - PAGE 159**

**C. RESOLUTION NO. 13-12 - RESOLUTION ACCEPTING HOLIDAY DRIVE AS A CITY-MAINTAINED STREET**

Summary: The consideration of a resolution to accept Holiday Drive as a city-maintained street.

Code of Ordinance sec. 7-15-1(f)(4)a requires that streets dedicated for public use be accepted by resolution of the City Council. The developer's engineer submitted a written request on December 17, 2012 asking the City to accept the subject street as a city-maintained street.

Holiday Drive from US 25A (Sweeten Creek Road) to its dead-end is a developer-constructed street that has an average width of 19 feet with valley curb, a length of 0.17 mile, and a right-of-way width of 35 feet.

Transportation Department staff and Public Works Department staff inspected the subject street and determined that it was constructed according to current standards as indicated in the City of Asheville's Standard Specifications and Details Manual. In addition, the developer's engineer has furnished a signed and sealed letter verifying that the subject street was constructed to current City of Asheville standards.

Following City Council's approval of this resolution, the subject street will be added to the official Powell Bill List.

This action complies with the City Council Strategic Operating Plan within the Sustainable Focus Area by accepting street infra-structure to help support the healthy growth of the City.

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help maintain the street.
- The street provides access and connectivity in a residential community.

Con:

- Powell Bill Funds will not cover 100% of the total cost to maintain the street.

There will be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the street.

Staff recommends that City Council accept Holiday Drive as a city-maintained street.

**RESOLUTION BOOK NO. 35 - PAGE 160**

**D. RESOLUTION NO. 13-13 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH THE MEN'S GARDEN CLUB OF ASHEVILLE FOR A PORTION OF CITY-OWNED REAL PROPERTY AT 80 HARDESTY LANE, ASHEVILLE, NC**

Summary: The consideration of a resolution authorizing the City Manager to execute a Lease Agreement with the Men's Garden Club of Asheville for a portion of city-owned real property at 80 Hardesty Lane, Asheville, NC.

The Men's Garden Club of Asheville is a non-profit organization that seeks to provide a forum for those interested in horticulture and gardening, and seeks to serve the community through area beautification projects. Each year, the Men's Garden Club cultivates a large variety of plant material to sell to the public, in order to generate funds for a community college scholarship program in horticulture. In 2000, the Club leased a 0.50 acre +/- portion of City property at 80 Hardesty Lane, and established a greenhouse to support the Club's mission.

The property at 80 Hardesty Lane is approximately 33 acres in total and is located at the back of the Recreation Park complex, between the Swannanoa River and the railroad. The current uses of this property are: (1) The City of Asheville Public Works Department operates a 5-acre beneficial fill site for waste concrete and other inert materials; (2) New Sprout Organic Farms leases 10 acres of land for certified organic fruit and vegetable production; and (3) Danny's Dumpster leases 5 acres for an industrial compost operation.

At this time, the lease between the City and the Men's Garden Club has expired, and the Men's Garden Club wishes to re-establish a lease of the property for a five year term.

The proposed lease terms are as follows:

- Rental: As consideration for the lease, the Men's Garden Club will provide goods and services to revitalize and re-establish the ornamental gardens at the John B. Lewis Soccer Complex as directed by the Parks, Recreation and Cultural Arts Department
- Tenant responsibilities: Maintenance of all improvements, cleanliness of lease area and clearing of debris
- All utilities to be paid by the tenant
- Mutual rights to terminate lease
- Standard provisions of all City leases (e.g. insurance, indemnity, etc.) will also apply

The Notice of Intent to enter into a Lease Agreement with the Men's Garden Club was published on January 11, 2013, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the Lease Agreement is being requested.

This action complies with the City Council Strategic Operating Plan by addressing the following goal: Fiscal Responsibility - by leveraging an external partnership to perform landscape improvements at a City Facility and thereby reduce City service costs. This action also supports the City of Asheville Parks, Recreation, Cultural Arts & Greenways Master Plan by increasing the city's resources with alternative funding sources ensuring a high level of service in parks and

facilities by addressing capital maintenance of existing parks and facilities to meet community standards.

Pros:

- Mission of Men's Garden Club supports educational opportunities for local students
- Beautification of John B. Lewis Soccer Complex
- Community investment in a Parks facility at low cost to the City

Con:

- None

The City will receive no rental income from this lease.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute the lease agreement with the Men's Garden Club of Asheville on behalf of the City of Asheville.

When Councilman Smith asked if the Men's Garden Club would be willing to devote some of their plantings to edibles, City Manager Jackson said that the City will encourage them to include a fair amount of edible plants and will report back to Council.

**RESOLUTION BOOK NO. 35 - PAGE 162**

**E. RESOLUTION NO. 13-14 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH BUCHANAN AND SONS INC. FOR THE CHEROKEE ROAD RETAINING WALL CONSTRUCTION PROJECT**

**ORDINANCE NO. 4155 - BUDGET AMENDMENT FOR THE CHEROKEE ROAD RETAINING WALL CONSTRUCTION PROJECT**

Summary: The consideration of: 1) a resolution authorizing the City Manager to execute a unit price contract in the amount of $390,900.00 with Buchanan and Sons, Inc., for the project known as the Cherokee Road Retaining Wall Construction Project, Project # ENG-11-12-011; and 2) a budget amendment in the amount of $175,468 from unused debt proceeds from projects completed under budget to fund the contract and a 15% contingency.

In response to a visual inspection conducted by the City that found the stability of the existing retaining wall to be in question, a Request for Qualifications for an Engineering Firm to evaluate, recommend and design a solution was advertised on October 27, 2011.

The engineering firm of Michael Baker Engineering Inc. was selected for this undertaking. They provided an Analysis Report on March 27, 2012, which recommended replacing the existing structure.

This wall, which is located in the Historic Albemarle Community, required the new design to be approved by the Historic Resource Commission. This approval was received on May 9, 2012.

The project generally consists of removal of the existing wall and constructing a cast-in-place concrete wall that will be veneered with the stone from the existing structure; and updating and installing storm drainage features, relocating a section of waterline and resurfacing.

The contract for the construction of this project was advertised for competitive bidding on November 5, 2012. Five (5) bids were received and were opened on December 13, 2012.

Buchanan and Sons Inc., of Whittier, NC, was the apparent lowest responsible bidder at an amount of $339,913.50.

This action supports the City of Asheville's Strategic Operating plan under the goals of Fiscal Responsibility.

Pros:

- Updating aging infrastructure.
- Retain the historic aesthetic nature of the Albemarle community with a modern retaining wall.
- Completion of a key 2012/2013 fiscal year CIP project.

Cons:

- Project management and contract administration will consume staff time and City funds.
- Temporary road closures.

As noted above, in order to fully fund the contract and a 15% contingency, a budget amendment in the amount of $175,468 is included with this agenda item. Funding for this budget amendment will come from unused debt proceeds associated with projects that were included with the City's 2012 Limited Obligation Bonds (LOBs) debt offering. Several of the LOB's projects have been completed under budget, producing savings to date of approximately $1.2 million. If Council approves the budget amendment of $175,468 for this contract, there will be approximately $1.0 million in available LOBs proceeds remaining that can be allocated to other projects. Staff is recommending that this remaining balance be allocated during the upcoming FY 2013-14 capital improvement process.

Staff recommends City Council to: 1) authorize the City Manager to execute a unit price contract with Buchanan and Sons, Inc., in the amount of $390,900.00 which includes an additional 15% to cover any changes or unexpected occurrences; and 2) approve a budget amendment in the amount of $175,468 from unused debt proceeds from projects completed under budget to fund the contract and a 15% contingency.

**RESOLUTION BOOK NO. 35 - PAGE 163**
**ORDINANCE BOOK NO 28 - PAGE 101**

**F. RESOLUTION NO. 13-15 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE US DEPT. OF HOMELAND SECURITY TO ACCEPT SUBGRANTEE FUNDS**

**ORDINANCE NO. 4156 - BUDGET AMENDMENT TO ACCEPT SUBGRANTEE GRANT FROM THE US DEPT. OF HOMELAND SECURITY**

Summary: The consideration of (1) a resolution authorizing the City Manager to enter into an agreement with the US Department of Homeland Security through North Carolina Emergency Management to accept sub-grantee funds for APDs Hazardous Devices Unit Equipment to include a Remote Firing Device and shock tube initiator; and (2) to approve the budget amendment accepting funds in the amount of $7,547.

The purchase of a Remote Firing Device with 2 Recievers (approximately $6,256) and the 3 of the two button handheld shock tube initiator with tip (approximately $1290) for the Hazardous Devices Unit (HDU) will enhance APD's Bomb Squad by insuring we maintain NIMS III Standard and FBI Accreditation Standards.

This investment will support the State Homeland Security Strategy goals by enabling the local Bomb Squad Units to respond more effectively and efficiently on a regional basis, ensuring

faster response to explosive incidents and other explosives related matters. This addresses a National Overarching Priority by implementing the NIMS III Standards to all bomb squads across North Carolina. In addition, it addresses a National Capability Specific priority by strengthening CBRNE detection and response capabilities.

The purchase and implementation of the above equipment by the APD HDU will greatly enhance the safety of our Citizens, as well as those in surrounding communities due to the regional response capability of APD's HDU. This equipment will also increase the safety for the members of the HDU.

This action complies with City Council's Strategic Operating Plan in the Focus Areas - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities.

Pros:

- Increase safety for HDU members
- Increased safety for our communities

Con:

- None

The acquisition cost for the items is fully-funded with the $7,547 NC Emergency Management grant; thus, there is no fiscal impact on the Police Department's capital outlay budget.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to enter into an agreement with the US Department of Homeland Security through North Carolina Emergency Management to accept sub-grantee funds; and (2) a budget amendment accepting funds in the amount of $7,547.

**RESOLUTION BOOK NO. 35 - PAGE 164**
**ORDINANCE BOOK NO. 28 - PAGE 103**

**G. ORDINANCE NO. 4157 - BUDGET AMENDMENT TO ACCEPT PRIVATE DONATIONS FOR THE ASHEVILLE POLICE DEPARTMENT**

Summary: The consideration of a technical budget amendment, in the amount of $15,137, from donations by citizen groups for the Asheville Police Department, in order to move donated funds that have already been received from the City's balance sheet to the Special Revenue Fund.

The Asheville Police Department (APD) has received $15,137 in donated funds from various sources. These donated funds are currently held in a balance sheet account on the City's financial statements. In order for APD to be able to spend these funds, Council must first approve a budget amendment authorizing use of those funds in the City's Special Revenue fund. These funds are to be used by the APD as needed. The APD has requested that these funds be applied to the APD Private Donations project account to assist with the Annual Awards Program. The APD wishes to acknowledge the generosity, and express gratitude for their support of the Asheville Police Department.

This action complies with City Council's Strategic Operating Plan in the Focus Areas – Fiscal Responsibility and Safe.

Pros:

- Acceptance of gift from various citizen groups
- Furtherance of APD Annual Awards Program to recognize employees and citizens in enhancing our community and Department

Con:

- None.

As noted above, $15,137 in donated funds are currently included on the City's balance sheet. Moving these funds to the Special Revenue Fund and authorizing their use has no fiscal impact.

City staff recommends City Council adopt the technical budget amendment in the amount of $15,137 to move donated funds that have already been received from the City's balance sheet to the Special Revenue Fund.

**ORDINANCE BOOK NO. 28 - PAGE 105**

**H. ORDINANCE NO. 4158 - TECHNICAL BUDGET AMENDMENT FOR PLAYGROUND CONSTRUCTION AT WNC NATURE CENTER**

Summary: The consideration of a technical budget amendment in the amount of $110,089 to move budget from the special project fund to the general capital project fund.

On November 27, 2012 City Council approved a contract with B Allen Construction, Inc. for construction of the red wolf exhibit improvements, spider kingdom playground and trail extension at the WNC Nature Center. Upon execution of the contract, staff realized that the budget for the construction contract was split between two separate City funds. To facilitate the contracting process and the recording of the fixed asset improvements that will result from this work, the Finance Department recommends consolidation of the budget for this contract in the City's general capital projects fund.

Pros:

- Consolidation of budgets will facilitate the contract process and the proper recording of fixed asset improvements.

Cons:

- None

There is no fiscal impact to this action; the budget for this contract has been previously approved by City Council.

City staff recommends City Council approve the technical budget amendment in the amount of $110,089 to move budget from the special project fund to the general capital project fund.

**ORDINANCE BOOK NO. 28 - PAGE 107**

Vice-Mayor Manheimer asked for public comments on any item on the Consent Agenda, but received none.

Vice-Mayor Manheimer said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Hunt moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. HOUSING AUTHORITY UPDATE

Mr. Brian Weinkle, Chairman of the Housing Authority of the City of Asheville, briefed Council on their activities of the past year and goals for the upcoming year.

Mr. Weinkle and Mr. David Nash, COO of the Housing Authority, responded to various questions from Council, some being, but are not limited to: what constitutes termination for fault; what strategies does the Housing Authority implement to encourage residents to conserve energy; what will the Housing Authority do to reassess their approach under the Choice Neighborhoods grant; what is the timeline for completion of the Aston Park Tower and W.C. Reid Center projects; and what is the total number of people living in housing that the Housing Authority manages.

On behalf of City Council, Vice-Mayor Manheimer thanked Mr. Weinkle for his leadership and the entire Authority for their dedication.

### B. CARBON FOOTPRINT ANNUAL REPORT

Ms. Maggie Ullman, Sustainability Program Manager, provided Council with the Carbon Footprint Annual Report. She briefly reviewed the policy context and reviewed charts of annual reductions, key reduction efforts, annual reductions by government sector, total energy spending over time, fleet gas and diesel consumption over time, and the average price per gallon of fleet fuel.

In conclusion, (1) a 6.42% annual reduction is a tremendous achievement; and (2) after 5 years of plucking low hanging fruit we may need to get the ladder (a) fuel usage reductions and fuel diversification will be essential to continue hitting carbon reduction targets; (b) significant fuel usage reductions will be essential to offsetting continued fuel price increases in the future; and (c) unpredictable seasonal temperature variations due to climate change may challenge carbon reduction planning going forward.

Ms. Ullman responded to various questions from Council, some being, but are not limited to: how many hybrid vehicles does the City have; suggestion to follow-up with the Asheville High electrical engineering people about converting hybrids into plug-in hybrids; can our City buses be converted to natural gas; and update on the community carbon footprint.

### C. SIDEWALK UPDATE

Director of Transportation Ken Putnam said that there are two purposes of this update. One is to update City Council on new sidewalk construction projects within the corporate limits. The last time staff updated City Council was during August 2010, first at a council meeting on August 10, 2010, and second at a community council meeting (in East Asheville) on August 31, 2010. And, the second purpose is to update City Council on revisions to the sidewalk ordinance that were approved on December 15, 2009.

As indicated in the previous update, 7.5 linear miles of new sidewalk were constructed with City funds and/or labor during the five-year time period between FY 2005-06 and FY 2009-10 at a cost of $1,371,000. During the last two fiscal years, 2.6 linear miles of new sidewalk have been constructed at a cost of $564,000. Three projects have been completed in the current fiscal year for a total length of 1.0 linear mile. Notable achievements include completed sidewalks along Tunnel Road and Patton Avenue. We now have completed connections from downtown Asheville to the Veteran's Center along Tunnel Road (except for a very short section near Gashes Creek) and to Haywood Road (West Asheville) along Patton Avenue. The N.C. Dept. of

Transportation was a major partner in the sidewalk projects along Tunnel Road by constructing 1.5 linear miles.

The primary funding source for new sidewalk construction is within the City's Capital Improvement Plan process and the Transportation Department is responsible to develop a working list of projects every budget year for consideration. This list is based on the recommended criteria included in the City of Asheville Pedestrian Plan (February 22, 2005) to prioritize projects. The criteria includes zoning jurisdiction, proximity to schools, parks, and community centers, proximity to transit stops, needed linkages that complete a pedestrian network (the pedestrian plan identified about 108 linear miles of needed sidewalk linkages) or address a safety concern, feasibility of construction, and major thoroughfares and connector streets.

In addition to the recommended criteria included in the Pedestrian Plan, City staff adheres to the following guiding principles:

- Safety – installing sidewalks along the higher traffic volume streets.
- Connectivity and multi-modal (complete streets principles).
- Economy and efficiency – grant leveraging and competent deployment of City forces.
- Balancing projects throughout the City (north, south, west, and east).

Given the city's limited resources, especially during the current economic climate, staff is committed to surveying, designing, and constructing new sidewalks in the most efficient manner possible including leveraging our resources with appropriate partners while making viable connections to existing infra-structure such as bus stops and/or shelters and community buildings, schools, parks, and libraries.

City Council approved the following changes to the sidewalk ordinance (via Ordinance # 3816 and Resolution # 09-266) on December 15, 2009:

- Consolidate the geographical areas where the fee-in-lieu-of construction funds can be spent.
- Allow developers eligible for the fee-in-lieu-of construction to pay 50% of the fee if sidewalk is only required on one side of the street.
- Provide the ability for the fee-in-lieu-of construction amount not to exceed 15% of construction costs even if the sidewalk is shown as needed linkage on the Pedestrian Thoroughfare Plan.

To date, $173,000 has come into the newly established single fund. $100,000 is being used for new sidewalk construction during the current fiscal year and at least $50,000 will be budgeted for use in FY 2013-14.

No negative comments regarding the changes have been received during the past three years.

Mr. Putnam responded to various questions from Council, some being, but are not limited to: when will the sidewalk master plan adopted in 1999 and updated in 2005 be updated again; what are the details and timeline for the two projects (Hendersonville Road and New Leicester Highway) identified by the Transportation Improvement Plan; and is there evidence that developers are choosing to pay the fee in lieu of instead of constructing sidewalks.

**D. WATER RESOURCES UPDATE**

Project Manager Phil Kleisler updated City Council on the Water Resources process update from January 8 - 22, 2013. He then provided Council with the information sharing

between the City and MSD. He noted that he has received 36 resolutions from North Carolina cities that have adopted opposing legislation that provides for the forced taking of a water system.

Councilman Smith hoped that our legislators will withhold any action until we have the opportunity to sit down with all our partners regarding our good faith efforts to find a local solution achieving the cost savings and efficiencies sought by the Study Commission.

Vice-Mayor Manheimer said that the League is hosting a function in Raleigh for officials to meet with their legislators on various issues. She, Councilman Hunt, Councilman Pelly and City Attorney Oast will be attending that function.

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF HARRIS TEETER PHASE 2, LOCATED ON 17 AND 23 ELOISE STREET AND 136, 176 AND 180 MERRIMON AVENUE, FROM HIGHWAY BUSINESS DISTRICT, COMMERCIAL BUSINESS I DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING IN ORDER TO FACILITATE ADDITIONAL OUTPARCEL DEVELOPMENT IN ADDITION TO THE HARRIS TEETER STORE, AND A MODIFICATION REQUEST TO THE LANDSCAPE BUFFER

Urban Planner Julia Fields said that this is the consideration of an ordinance to conditionally zone Harris Teeter Phase 2, located at 17 and 23 Eloise Street and 136, 176 and 180 Merrimon Avenue, from Highway Business District, Community Business I District and RS-8 Residential Single-Family High Density District to Highway Business District/Conditional Zoning in order to facilitate additional outparcel development in addition to the Harris Teeter Store, and a modification request to the landscape buffer. This public hearing was advertised on January 11 and 18, 2013.

Ms. Fields said that the project site is approximately 8.45 acres in size, consists of four separate parcels, and is currently addressed as 17 and 23 Eloise Street and 136, 176, and 180 Merrimon Avenue. The vast majority of the property (7.3 acres) is zoned Highway Business (HB). The remainder of the property is zoned Community Business I (CBI), and Residential Single-Family High Density (RS8) Districts. Construction is underway on approximately 4.62 acres of the southern portion of the site for a Harris Teeter grocery store (45,000 square feet). There are two vacant houses and office buildings on the remainder of the property.

The applicant is petitioning for conditional zoning of the entire site to Highway Business Conditional Zoning (HBCZ) to allow for the construction of up to five outparcels on the approximately 3.83 acres of the northern portion of the property in addition to the construction of the grocery store. On the site plan there are three outparcels depicted, however, this configuration is subject to change. The developer has proposed placing the following parameters on the development of the outparcels:

- No more than four outparcels.
- Buildings shall be no more than 32 feet in height.
- Those buildings fronting on Merrimon will be oriented to the street and placed as close to Merrimon as is reasonably possible based on the ultimate uses.
- The architectural design and building materials used for the outparcels will be similar to that being utilized in the Harris Teeter construction.
- A maximum of 25,000 square feet of building space will be constructed on the outparcels.
- No more than one drive-thru operation will be permitted.
- As each outparcel is brought in for detailed review a Level I review may be triggered, dependent on the extent of variation from this concept plan.

The developer met with the residents/property owners from the neighborhood to listen to their concerns and discuss the plans. The developer incorporated a number of the neighborhood interests into the plans submitted for review.

Access to the site is as was approved under the Level II review via Merrimon Avenue and East Chestnut Street. A traffic impact analysis was prepared in conjunction with the conditional zoning application and was based on the above parameters and one drive through facility being located on the property. Sidewalks will be provided along all sides of the property.

Parking was approved for Harris Teeter (214 spaces) under the Level II review. Parking for the outparcels will be reviewed as details for each are finalized.

Buffering, street buffers, and street trees will be reviewed as part of the conditional zoning process subsequent to approval of the rezoning. Building impact and vehicular use area landscaping will need to be checked for compliance as details for each outparcel are finalized. Alternative compliance for the buffer along Holland Street (due to existing site conditions) on the Harris Teeter portion of the site received approval from the Tree Commission. The developer is requesting a minor modification of the required buffer width and plantings along Eloise Street, due to the retaining wall proposed and sidewalk placement. Open space is proposed to be urban open space. The development proposes to incorporate a number of urban open space features throughout the site with a focus along Merrimon Avenue. The buildings will be located closer to Merrimon than the typically required 35 foot front setback for Highway Business zoning. A public area and bus stop will be located near the corner of Merrimon Avenue and East Chestnut Street and the urban open spaces all along Merrimon Avenue will be connected via a 10 foot sidewalk. The sidewalk area will contain benches periodically spaced to offer public seating. An existing stone monument and wrought iron fence from the site will be incorporated into the bus stop/public area. Based on the final use of the parcels fronting on Merrimon Avenue, outdoor seating may be incorporated into the areas and connected to the sidewalk on Merrimon Avenue. Significant portions of the historic stone walls have been maintained and new walls erected are designed to complement these walls.

The Technical Review Committee of the City of Asheville reviewed this application at its meeting on November 19th.

The Planning and Zoning Commission first heard this matter at a meeting on December 5, 2012. At that meeting they did not support the proposal (3-3 vote) and the issue of most concern was a proposal for allowing two drive-thru uses (which the staff also did not support). However, due to a notification error resulting from changes to computer software, the conditional zoning request was reheard on January 2, 2013. At that meeting the developer had changed the proposal to limit the development to only one drive-thru use. The Commission voted at this meeting to recommend the rezoning to you in a vote of 4-1. The Commission did express general concern about the underlying zoning of the property, but there was general acknowledgement that the current proposal was not the correct venue for those concerns.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed concept master plan has been reviewed by the City's Technical Review Committee which approved the plan with conditions. In conducting this review, the TRC evaluated health and safety issues.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   There are no significant natural or topographic features on the site and much of the site has already been improved as part of the grocery store construction. The proposed development is similar to other uses/buildings along Merrimon Avenue. While staff believes that City policy indicates a preference for buildings of a more urban nature, the proposed one story limitation is permitted, and not unusual, in the Highway Business zoning district.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The site was previously occupied primarily by a car dealership and later by other commercial ventures and largely consisted of impervious surfaces. The concept plan is anticipating commercial development of the entire site but should improve the value of adjoining properties through improved landscaping and aesthetics on the site.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   As previously indicated, the conceptualized commercial development of this site is similar to the scale, bulk, coverage, and character of much of the commercial development along Merrimon Avenue in the vicinity.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

   The area is shown as a potential urban village in the Asheville City Development Plan 2025. [An urban village proposal in 2007 was pulled from consideration by the applicant at the time]. The proposal supports the goal of locating larger commercial uses in appropriate areas easy to access from the interstate and adequately served by public services. The proposal supports the strategy of providing a transit stop as part of a redevelopment located along a transit route. Certain elements of the proposed development do not support the City's interest in limiting suburban development patterns in more urban settings, but the current Highway Business zoning of the majority of the property does not support this goal.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The development is located along a principal transit route and on a major thoroughfare in the City. The project has received approval from the City's Technical Review Committee concerning issues of water, fire, police protection, etc.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The applicant has submitted a traffic impact analysis for the project that has been reviewed and approved by the City's Transportation Department. A traffic signal and other improvements to Merrimon Avenue and East Chestnut are incorporated in the plans.

Pros:

- Provides for greater use of a large property on a major thoroughfare within the city limits.

- Improved transportation amenities, large sidewalks, public open space areas, and greatly enhanced landscaping will improve the aesthetic impact of the site.

Con:

- The development, while providing some urban amenities, is largely suburban (auto access oriented) in nature in a gateway area close to downtown.

This conditional zoning request was recommended for approval by a 4-1 vote of the Planning and Zoning Commission. Five people spoke at the Planning & Zoning meeting with most speakers concerned about drive thru facilities and in particular fast food restaurants. There was also concern expressed about traffic congestion in the surrounding residential area.

At a meeting on November 19, 2012, the Technical Review Committee of the City of Asheville reviewed this proposal and approved it with conditions. On January 2, 2013, the Planning and Zoning Commission recommended approval (4-1) with the following conditions:

- The conditions recommended in the TRC report.
- The standard conditions listed below.
- That there are no more than four outparcels.
- Buildings shall be no more than 32 feet in height.
- Those buildings fronting on Merrimon shall be oriented to the street and placed as close to the street as is reasonably possible based on the ultimate uses.
- The architectural design and building materials used for the outparcels will be similar to that being utilized in the Harris Teeter construction.
- The developer is allowed no more than one drive thru operation.
- A maximum of 25,000 square feet of building space will be constructed on the outparcels.
- As the uses are submitted for final review, if the traffic counts exceed those indicated in the originally submitted traffic study, a new traffic impact analysis would need to be conducted and approved including the traffic impact from Trader Joe's.
- There be sidewalk connectivity from Merrimon Avenue to the buildings constructed on the outparcels.
- City Council review and condition the list of permitted uses for the site.
- No dumpster will be located within 100 feet of residential properties.

She then responded to various questions Council raised earlier, those being: can the parking lot be shielded; why wouldn't the N.C. Dept. of Transportation (NC DOT) install a traffic light at Broad Street and Merrimon Avenue; if the project is denied, what can the developer do as a use by right; could the developer develop the commercial part of the property; can the developer leave the RS-8 portion of the property undeveloped; and if the project is denied, could the developer ignore the other recommended conditions.

City Traffic Engineer Jeff Moore said the original study was produced in 2010 which included two restaurants - one with a drive through and one without. When the project was revised to be one restaurant with a drive through and additional retail space, the impact of the restaurants went down and freed up a lot of trips. The improvements being done to mitigate the traffic are still appropriate with the change. The NC DOT has the jurisdiction over Merrimon Avenue and under their guidelines, the Broad Street traffic light would be too close to the existing traffic signal on Chestnut. The new signal will be incorporated into the NC DOT computers for timing. The right-in and right-out condition being installed at Broad Street is another condition that NC DOT required. It will make it safer because of the crest of the hill on Merrimon Avenue. Future out parcels will be reviewed as they come in. If the impact of the traffic of future uses exceeds that which was projected in the original TIS then it will have to be reviewed again and at that time the traffic from Trader Joe's will be factored in.

In response to Councilman Bothwell, Mr. Moore said that there will be a left turn lane into Trader Joe's going north.

In response to Councilman Davis, Mr. Moore said that when the original TIS was done, Trader Joe's was not proposed, therefore, the TIS only took into account existing conditions at that time. When they learned about Trader Joe's, we allowed the developer to keep the TIS because the impact was less than what was originally proposed. If something happens to change this (a use that caused additional traffic so that these numbers are no longer valid), the TIS would have to be re-done. At that point, since it would be a new TIS and we now know about Trader Joe's, it would have to take that traffic into account.

City Attorney Oast said that Council has the ability, through this process, to add conditions.

In response to Councilman Hunt, Mr. Moore pointed out on the master plan all pedestrian accesses into and out of the site. Ms. Fields said that there are a narrow set of steps (which are not Americans with Disabilities Act compliant) in the back of the property and on Eloise Street at the request of the neighborhood.

When Councilman Hunt asked how a drive through restaurant compares to a walk-in restaurant, Mr. Moore said that he expected to see more trips for a drive through due to the convenience factor.

Mr. Steve Vermillion, developer, was happy to answer questions. He did note that there is a sidewalk that runs the entire length of the property. He asked that Council consider delaying the vote until Mayor Bellamy can take part in the discussion.

When Councilman Hunt asked how critical a fast food drive-through is on the site, Mr. Vermillion said it is critical for the success of the development. He said they cut back on their request from two drive-throughs to one in order to attract of the users, like a bank or coffee shop or a fast food restaurant.

Vice-Mayor Manheimer opened the public hearing at 6:40 p.m.

The following individuals spoke about their concerns of a drive through, especially for a fast food restaurant , for several reasons, some being, but are not limited to, drive throughs run counter to the 2025 Plan; idling produces carbon and contributes to global warming; need to get people to get out of their cars, which will help in the obesity epidemic; air quality issues from idling, Harris Teeter will already have a drive-through; developer should help pay for traffic calming in the area; developer should not be allowed to use Chestnut Street; request that the developer lease the 2-door house on the property; fast food restaurants are responsible for a lot of litter; lights from development should be shielded for the neighborhood; developer should renovate the two homes on Eloise Street and not tear them down; the development will encroach on established residential neighborhoods; homes are beginning to be renovated in the area and bringing in a fast food restaurant will not help revitalize the area; need for sidewalks in the area; safety for pedestrians, bicyclists and drivers; cut-through traffic; need for traffic calming measures due to speeding; already traffic congested area; odor from fast food restaurants; concern of additional Trader Joe traffic in the area; narrow streets cannot handle additional traffic; request for no through traffic on area streets; quality of life of neighborhood will suffer; will decrease property values in the area; suggestion to ask developer to make this a mixed-use plan and include housing on site to help further reduce global warming; dumping of refuse and litter behind the site; existing excessive traffic; noise; distracted drivers; significant crossing issue at Chestnut and Maxwell intersection; suggested City adopting the anti-idling policy for service trucks; and parking on the streets is now a problem:

Ms. Heather Rayburn, representing the Five Points Neighborhood

Ms. Megan Kirby, resident on Eloise Street
Mr. Nick King, resident on Fulton Street
Mr. Alan Ditmore, Leicester resident
Ms. Shelly Lloyd, resident on Holland Street
Resident on Mt. Clare
Ms. Brandee Boggs, resident of Five Points Neighborhood
Mr. Greg McCoy, resident on Monroe Place

Vice-Mayor Manheimer closed the public hearing at 7:23 p.m.

City Attorney Oast suggested that if City Council continues this matter that they reserve the right to re-open the public hearing if new information is brought forward, noting that if the hearing is re-opened that the comment will be limited only to the new information.

Councilman Hunt moved to continue this matter until February 12, 2013, and that Council reserve the right to re-open the public hearing to receive new information only. This motion was seconded by Councilman Smith.

Councilman Hunt said that the 2025 Plan represents the principles of smart growth and in that Plan it suggested that this area be developed as Urban Village. That would have been the most appropriate development for this site. The zoning of this property is almost entirely Highway Business and a big part of the struggle is how do we deal with it given the hand we're dealt. It is painful for him to see a suburban strip mall development so close to downtown. He agreed that we need to step back and consider other sites around town and be careful that they are zoned in a way that reach the goals laid out in the 2025 Plan. The options before Council do not include an option to unilaterally make it so that there won't be a fast food restaurant on the site. Council can vote in favor of the conditional zone and there be one drive-through, or vote it down and the developer as a right by use can have a drive-through. He hoped the continuance would allow for continued dialogue for the City and the developer to consider other conditions.

Director of Transportation Ken Putnam responded to Councilman Pelly when he asked about the ordinance prohibiting truck traffic from using specific roads.

In response to Councilman Pelly, City Attorney Oast said that he was not aware of the anti-idling policy on loading and unloading being anything but a suggestion or a recommendation by the N.C. Dept. of Environment and Natural Resources, but would be happy to check on that.

Ms. Fields responded to Councilman Bothwell when he asked about why the buildings are as close to Merrimon Avenue as possible. City Attorney Oast said that Council can specify in the conditional zoning permit that vehicular maneuvering areas be located away from the Merrimon Avenue frontage.

When Councilman Bothwell asked Mr. Vermillion if he would consider a restriction on not having a fast food drive through restaurant on the site, Mr. Vermillion replied no. He said that from a financial standpoint as well as other reasons, the owner doesn't feel they can do that.

The motion made by Councilman Hunt and seconded by Councilman Smith carried unanimously.

**Closed Session**

At 7:41 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; Roger Aly. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); and (2) To prevent disclosure of information that is privileged

and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 7:56 p.m., Councilman Smith moved to come out of closed session. This motion was seconded by Councilman Pelly and carried unanimously.

**B. PUBLIC HEARING TO CONSIDER A SIGNAGE PLAN FOR UNC-ASHEVILLE**

**FIRST READING OF ORDINANCE NO. 4159 - ORDINANCE APPROVING A SIGNAGE PLAN FOR UNC-ASHEVILLE**

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of a comprehensive signage plan addressing a wide variety of signage needs for the UNC-Asheville campus. This public hearing was advertised on November 2 and 9, 2012. This public hearing was continued from November 13, 2012, to this date.

Vice-Mayor Manheimer opened the public hearing at 8:09 p.m.

The applicant is seeking the approval of a comprehensive signage plan addressing a wide variety of signage needs for the UNC-A Campus including:

- Building identification (free-standing)
- Building identification (attached)
- Pedestrian directional
- Vehicular directional
- Gateway
- Informational kiosk
- Parking lot
- Street & traffic control
- Banners

The project area is quite large, approximately 300 acres, and is somewhat unique in that it must provide appropriate identification and wayfinding to both a significant pedestrian population as well as to the steady flow of vehicles that visit the campus throughout the day. In addition to providing signage that helps visitors find their way around campus, the University also set forth the goals to define the campus perimeter, create a strong sense of place, and to highlight the university's assets, features, amenities and destinations.

The majority of the signs included in the package are located internally to the campus property and not visible from the boundaries, and under the existing sign standards these signs would not be required a sign permit. As a result, these signs which generally include building identification (both attached and free-standing), traffic & street signs, pedestrian information & directional, and parking lot signs are not evaluated in any great detail and are reviewed for their consistency in design & style (typography, color palette, iconography, etc.) with the overall plan. The more substantial signs, both in size and visual impact are the focus of this report's analysis – these signs include:

- Vehicular Informational signs
- Vehicular directional signs
- Gateway signs, and
- Pole banners

***Vehicular Informational signs.*** There are only two of these signs proposed where motorists would pull up and review the campus map to understand the overall layout and perhaps seek directions to a specific location. These signs are single-faced, free-standing signs with a wide base, and are proposed to have an overall height of 5'10" and will be approximately 25 square feet.

The number and proposed locations for these signs appears appropriate and appear to offer valuable information. The individual permit should include a schematic of the pull off area to allow the transportation department the opportunity to review for conflicts and ensure safe maneuvering.

***Vehicular Directional Signs.*** There are 24 vehicular directional signs proposed. These signs are double-faced, post-mounted signs and stand approximately 14' tall and are 22.5 square feet per face. These signs are intended to pick-up where the regional wayfinding signs leave off, providing more detailed information. Once being directed off of WT Weaver Blvd. or Broadway Ave. the motorist can rely on UNC-A's directional signs to guide them to the appropriate entrance and the most direct route to their desired destination.

An earlier version of the UNC-A proposal generated some concern with overlap and/or conflict with the existing CVB wayfinding signage, particularly for those signs located on WT Weaver Boulevard and Broadway Avenue. After meeting with the City staff and the CVB, the application has been amended to largely address these concerns. The only remaining concern was voiced by the neighbors in the area at a recent community meeting and generally related to the overall number of signs that a non-campus visitor may have to experience, some of whom use these routes multiple times a day.

***Gateway signs.*** There are five proposed gateway sign locations:

- Merrimon Ave. & WT Weaver Blvd.
- WT Weaver Blvd. & University Heights (round-about)
- University Heights & Campus Drive (triangle intersection)
- Broadway Ave. & Campus Dr.
- Broadway Ave. & WT Weaver Blvd.

The dimensions and square footages vary some based on the intersection location, whether there is an existing stone base that would be re-used, and whether the sign is a curved or straight. In general, the overall dimensions are not concerning and are appropriately scaled for the type and style of sign, and the proposed stone bases provide a natural and attractive aesthetic. Generally speaking, gateway signs serve an important purpose and provide a valuable "announcement" that that the traveler has entered the main campus property. Once beyond the "gate" the traveler would normally expect to rely on Vehicular Directional Signs to find the appropriate directions to the desired location.

As currently proposed, however, a traveler approaching from Merrimon Ave. or Broadway Ave. would potentially pass three separate "gateways" before arriving on the main campus. The more concerning locations are the two located at Merrimon & Weaver and Broadway & Weaver. Both of these locations have existing CVB wayfinding signage that would appropriately direct motorists off of the main thoroughfares toward the campus entrances. To approve the signs as currently proposed would result in an overlap with the existing CVB vehicular directional signs that include signage for the Botanical Gardens as well as UNC-A. These two signs also have the potential for communicating to the unfamiliar motorists that the UNC-A property continues south rather than east or west, depending on where they would observe the signs.

***Banners.*** There are approximately 67 banners proposed to be mounted on existing Progress Energy light poles, with additional poles installed as needed to maintain a consistent

spacing pattern. These proposed banners are rectangular double sided and approximately 12 square feet. Of the 67 banners proposed, 44 are located in the core campus area on the University controlled roads of Campus Dr. and University Heights. The other 23 banners are located along WT Weaver Blvd. and Broadway Ave.

The City of Asheville has an existing banner policy established in 2004 that established standards for a growing interest in use of banners for the promotion of special events and neighborhood identification. Also, that policy generally addresses banners as a temporary or occasional use. Banners for the use of marketing or branding were strongly discouraged during the consideration of this policy. The UNC-A banner proposal could be considered neighborhood identification but, it could also be argued that the use of banners is an effort to promote the UNC brand, and it is unclear how institutional uses should be considered. With respect to the standards regulating banners for neighborhood identification, the UNC-A proposal deviates primarily because it is intended to be permanent identification when the existing standards limit duration for a period of one year, renewable at the discretion of the director.

The banners proposed to be located internally on Campus Dr. and University Heights are not of great concern because they have limited visibility and, therefore, minimal impact on the larger Asheville community. The UNC-A proposal for the banners on Broadway and WT Weaver are of greater concern because these are roads that are commonly used by non-campus visitors, particularly by those residents in the adjacent neighborhoods of Jackson Park, Five-Points, and Montford. Additionally, while UNC-A owns property along WT Weaver and Broadway, the use of the banners extends beyond what is generally considered the campus boundaries and includes segments of WT Weaver and Broadway that are commonly used for access by other users and property owners.

A secondary concern is that the banner signs proposed are non-standard. The standardization for banner sizes in the banner policy was intentional to allow for shared use of hardware and poles by multiple users. The non-standard size and permanency of the UNC-A banners would preclude the use of the banners by other users. Additionally, UNC-A proposes to install new poles along the roadways where there is limited visibility and shoulder space. This results in new obstructions along the roadway and may necessitate the pruning or removal of existing vegetation.

Staff Findings: The University has provided a statement regarding the desired goals for identification, wayfinding, and place making, which has inspired several aspects of their signage plan. However, the City's purpose of allowing the consideration of a separate signage plan is as follows:

*The purpose behind this section is to permit creativity in sign design and placement to address site issues and constraints associated with topography, pedestrian-orientation, way-finding and other conditions unique to the subject development.*

The large majority of the proposed signage plan is easily supported and offers valuable and consistent identification and wayfinding for students and campus visitors. The areas of concern center on the gateway signage removed from the campus and the unprecedented use of pole banners in size, number of banner poles proposed, and intent for continuing use.

The gateway signage proposed to be located at 1) WT Weaver & Merrimon and, 2) WT Weaver & Broadway overlap with existing regional wayfinding signage already located at those intersections directing visitors to the campus property. One significant goal of the regional wayfinding program was to reduce the need for multiple signs which is in conflict with this proposal.

The pole banners on WT Weaver and Broadway are one method of perimeter identification, however, creative alternatives could also be considered that do not require the use

of banners. Also of concern, regarding both the gateway and pole banners, is that those signs that are located further from the campus perimeter appear to provide branding more than wayfinding or identification.

Pros:

- Provides improved identification and wayfinding to students, faculty, and campus visitors.
- Improved consistency of color, font, and iconography between all signs improves campus recognition.

Cons:

- Signs are numerous and have a visual impact on adjacent neighborhoods and non-campus travelers using perimeter roads.
- Multiple gateway signs may confuse visitors.
- Two of the five gateway sign locations overlap with existing regional wayfinding signage and is contrary to one of the regional wayfinding goals.
- Use of pole banners (permanency and non-standard size) is inconsistent with the City's banner policy.
- Permanent banners preclude the use of banners by other users.
- Signs not consistent with city policies and practices have the potential to establish an undesirable precedent.

Staff recommends that the signage plan for UNC-A be approved, subject to the following conditions:

1) Gateway signs be limited to the following locations:
    - WT Weaver Blvd. & University Heights (round-about)
    - University Heights & Campus Drive (triangle intersection)
    - Broadway Ave. & Campus Dr.
2) Pole banners are restricted to Campus Dr. and University Heights.
3) All signs located within road rights-of-way shall obtain all necessary approvals or encroachments from the regulating agencies.
4) Any changes to the signage included in this plan may require a new review by City Council.
5) All signs shall comply with the proposed standards and no exceptions or variances are permitted (minor changes to sign location due to visibility or other site constraints may be permitted).

Alternative Recommendation: Should Council wish to consider an alternative allowing pole banners on Broadway and WT Weaver, staff recommends substituting the following condition #2:

2) Eliminating the eastern segment of WT Weaver (from University Heights to Merrimon) and the southern segment of Broadway (from WT Weaver south) from consideration for pole banners, and requiring the use of standard size banners and options for shared use by other users (per the banner policy) on the other segments of these roads.

In response to Councilman Bothwell, Ms. Tuch said that the City adopted a banner policy in 2004 for the purpose of providing neighborhood and business district identification or to promote a special event. One concern about the banners is that the infrastructure that UNC-A proposes to use wouldn't be consistent with what we are looking for when we established the banner policy. The infrastructure was to promote multiple users and the hardware was a standard size to allow special event promoters to make use of that hardware at different times. UNC-A proposes to install their own poles and use their own hardware. It would not be available to the general public. It is also less consistent with the banner policy because that policy requires a one-year renewable time period, but UNC-A proposes the banners to be permanent.

Vice-Mayor Manheimer opened the public hearing at 8:24 p.m.

Mr. Rob Nelson, representing UNC-A, listed the goals for the project, which included improving wayfinding for visitors to their campus. As a result of meetings with City staff, Convention & Visitors Bureau, and some neighbors, they made changes to their original plan. They reduced the number of banners by 50% along WT Weaver and Broadway; reduced the overall size of the individual banners from 30x84 inches to 24x72 inches; eliminated the double banners on one pole; revised their approach on the gateways; and made sure that all signs and banners will be on UNC-A property. He urged Council to approve their request in order to allow them to achieve their goals.

Mr. Chad Roberson, representing PBC&L, reviewed the details of the plan outlined the need for wayfinding on and off campus.

Vice-Mayor Manheimer closed the public hearing at 8:33 p.m.

As Councilman Smith felt that having the pole banners on the boundaries really defines their space, but he didn't want other people who already have a neighborhood identity to have to adopt the UNC-A identity. Therefore, Councilman Smith moved to approve the UNC-A sign package, subject to the following conditions: (1) Gateway signs be limited to the following locations: (a) WT Weaver Blvd. & University Heights (round-about); (b) University Heights & Campus Drive (triangle intersection); and (c) Broadway Ave. & Campus Dr.; (2) Eliminating the eastern segment of WT Weaver (from University Heights to Merrimon) and the southern segment of Broadway (from WT Weaver south) from consideration for pole banners; (3) All signs located within road rights-of-way shall obtain all necessary approvals or encroachments from the regulating agencies; (4) Any changes to the signage included in this plan may require a new review by City Council; and (5) All signs shall comply with the proposed standards and no exceptions or variances are permitted (minor changes to sign location due to visibility or other site constraints may be permitted).

Councilman Davis said that UNC-A owns the land and even though there is neighborhood around them, it's still their campus. He supported the package submitted by UNC-A (including the two additional gateway signs).

Councilman Smith withdrew his motion.

Councilman Bothwell could not support the motion as he didn't think you need to enhance natural beauty by putting up signs.

Councilman Pelly understands they own the property along Broadway and WT Weaver, but it's largely undeveloped now. Then the time comes when the property is developed by UNC-A he would be fine having the pole banners along that route as well. But now, if you lived in the immediate neighborhood around there, the perception would be that the university banners border a residential neighborhood area.

Councilman Hunt felt that our sign ordinance is largely geared toward commercial signage and this is more of a wayfinding context. He said that UNC-A is a partner in the community in so many ways and rather than override a specific request they have made, he moved to continue the public hearing until February 12, 2013, and encourage City staff and UNC-A to look at the issues more closely and try to reach a consensus. This motion was seconded by Councilman Davis.

When Vice-Mayor Manheimer asked for public comment on the motion to continue, no one spoke.

Councilman Hunt and Councilman Davis withdrew their motion to continue the matter.

Councilman Smith said that he has not heard from any of the neighbors about their objection to the pole banners, and hoped that if UNC-A receives any negative feedback that they would take that feedback seriously as neighborhood identities run deep. Therefore, he moved to adopt Ordinance No. 4159, approving the UNC-A sign package, subject to the following conditions: (1) Gateway signs be limited to the following locations: (a) WT Weaver Blvd. & University Heights (round-about); (b) University Heights & Campus Drive (triangle intersection); (c) Broadway Ave. & Campus Dr; (d) Merrimon Ave. & WT Weaver Blvd.; and (e) Broadway Ave. & WT Weaver Blvd.; (2) All signs located within road rights-of-way shall obtain all necessary approvals or encroachments from the regulating agencies; (3) Any changes to the signage included in this plan may require a new review by City Council; and (4) All signs shall comply with the proposed standards and no exceptions or variances are permitted (minor changes to sign location due to visibility or other site constraints may be permitted). This motion was seconded by Councilman Davis.

Vice-Mayor Manheimer opened the public hearing at 8:44 p.m. and when no one spoke, she closed the public hearing at 8:44 p.m.

The motion made by Councilman Smith and seconded by Councilman Davis carried on a 4-2 vote, with Councilman Bothwell and Councilman Pelly voting "no."

City Attorney Oast said that because the motion failed to receive the 2/3 vote necessary to pass on the first reading, it will have to come back to Council at their next meeting for adoption on the second reading.

**ORDINANCE BOOK NO. 28 - PAGE 109**

**RESOLUTION NO. 13-18 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT THE THE UNIVERSITY OF NORTH CAROLINA AT ASHEVILLE FOUNDATION INC. FOR TRAIL DEVELOPMENT ON 525 BROADWAY DRIVE FOR THE REED CREEK GREENWAY**

Director of Parks, Recreation & Cultural Arts Roderick Simmons said that this is the consideration of a partnership with The University of North Carolina at Asheville Foundation, Inc. for the development of 525 Broadway as part of the Reed Creek Greenway Corridor.

The City has received a request from The University of North Carolina at Asheville Foundation, Inc. for the City to partner in development of 525 Broadway as part of the Reed Creek Greenway Corridor. The City of Asheville, RiverLink, Inc., the Foundation, and others have had continuing discussions regarding the construction of a greenway to be located on a portion of the property in approximately the location 525 Broadway as a part of the Reed Creek Greenway envisioned by the City.

The Foundation will submit a 2013 Federal Recreational Trails Program (RTP) Grant Application to the North Carolina Division of Parks and Recreation for a $200,000 potential grant to fund a portion of the design and construction costs for the greenway project with a target completion date of no later than August, 2015. The Grant Application is due no later than January 31, 2013.

The total cost of the greenway based on current estimated design and construction costs will be approximately $410,000. The Foundation will provide an amount not to exceed $75,000 toward the estimated costs. The Foundation would like the City to support the Final Grant Application and for the City to provide $75,000 in matching financial support, and RiverLink, Inc. to support the Final Grant Application and to provide $60,000 in financial support toward the construction component of the greenway.

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The City's $75,000 contribution for this project will come from the approved FY 2010-2011 capital improvement budget for greenway development in the Parks, Recreation & Cultural Arts Department.

Revenue sources for the project are summarized below:

| | |
|---|---|
| City's Contribution | $75,000 |
| UNC-A Foundation Contribution | $75,000 |
| River Link (Private Donations) | $60,000 |
| RTP Grant (if awarded) | $200,000 |
| Total project budget | $410,000 |

In the event that total project cost is less than $410,000 then the project costs will be shared in the proportions indicated above between the Foundation, City and RiverLink such that each parties' contribution commitment would be reduced pro rata.

If the Foundation does not receive the full $200,000 requested in the Final Grant Application or the final cost estimates or bids for the design and construction of the Greenway project exceed $410,000, then the Foundation shall continue to work with the City, RiverLink and other interested parties to find an alternative way to accomplish the Greenway project

The Foundation is requesting approval of a partnership agreement with the City to develop the Reed Greek Greenway component as outlined below:

1) Support the Foundation submitting a 2013 RTP Grant for $200,000
2) Provide $75,000 in matching funds towards development of the project
3) Support a future land swap that will move the greenway closer to the stream.

This action complies with the City Council Strategic Operating Plan by demonstrating fiscal responsibility through leveraging external partners to pursue master plan implementation. In addition, the Greenway Commission reviewed and approved the terms of this partnership agreement at its meeting on January 10, 2013.

Pros:
- Leverage outside funding to implement the Greenway Master Plan
- Accelerate the development of this greenway section
- Provide a needed linkage in the Reed Creek Greenway Corridor

Con:
- None

The requested $75,000 has been allocated for Greenway Development and is already included in the Park, Recreation and Cultural Arts Department's Capital Improvement Plan.

City staff recommends City Council to adopt a resolution authorizing the City Manager to enter into an agreement with The University of North Carolina at Asheville Foundation, Inc. for the development of 525 Broadway as part of the Reed Creek Greenway Corridor.

Vice-Mayor Manheimer was excited to note that the UNC-A students have committed a small portion of their fees to be dedicated towards this project. She felt this is a nice public/private/student partnership.

Councilman Hunt also spoke in support of the resolution acknowledging all the partners in this project.

Mr. Tim Schaller, formerly Montford resident, spoke in support of this project.

Vice-Mayor Manheimer said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hunt moved for the adoption of Resolution No. 13-18. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 169**

**C. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR NEW BELGIUM BREWING COMPANY LOCATED AT 157 CRAVEN STREET FOR A BREWERY AND DISTRIBUTION CENTER, WITH A MODIFICATION TO THE DRIVEWAY WIDTH, BUILDING HEIGHT AND LANDSCAPING**

**ORDINANCE NO. 4160 - ORDINANCE APPROVING A CONDITIONAL USE PERMIT FOR NEW BELGIUM BREWING COMPANY LOCATED AT 157 CRAVEN STREET FOR A BREWERY AND DISTRIBUTION CENTER, WITH A MODIFICATION TO THE DRIVEWAY WIDTH, BUILDING HEIGHT AND LANDSCAPING**

**ORDINANCE NO. 4161 - BUDGET AMENDMENT FOR MULTI-MODAL IMPROVEMENTS ON HAYWOOD ROAD**

**RESOLUTION BOOK NO. 13-16 - RESOLUTION IN SUPPORT OF PRIORITIZING FUTURE FUNDING OF THE RIVER ARTS DISTRICT TRANSPORTATION IMPROVEMENT PROJECT TO INCREASE THE CLEARANCE OF THE RIVERSIDE DRIVE RAILROAD OVERPASS (IF FEASIBLE) AND IMPROVE THE RADIUS AT THE CRAVEN STREET BRIDGE AND RIVERSIDE DRIVE IN BOTH DIRECTIONS TO ALLOW FOR LARGE TRUCKS TO TURN, AS THE FIRST FUNDED COMPONENTS OF THE PROJECT**

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

All Council members disclosed that they have visited the site, received e-mails and attended community meetings; however, they would each consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Vice-Mayor Manheimer opened the public hearing at 8:56 p.m.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for the project identified as New Belgium Brewing Company located at 157 Craven Street (City Exhibit 4 - Location Map), to develop a brewery and distribution center (the 216,237 square foot facility will also include administrative offices, visitor's center, and outdoor recreational spaces) and the a request for modifications to driveway width, building height and landscaping.

Ms. Bernstein said that the applicant is requesting review of site plans for the construction of a brewery for the production of up to 700k barrels of beer per year with additional space for administrative offices, a retail/visitor center, parking and outdoor recreational spaces (City Exhibit 5 - Master Plan Rendering). This project is considered a Level III review pursuant to Section 7-5-9(a) of the UDO which designates review for industrial uses of over 100,000 square feet. Level III projects are reviewed as Conditional Use Permits in all zoning districts.

The site consists of a 19.81 acre parcel located on Craven Street between Haywood and Hazel Mill Roads in the River District of West Asheville. The parcel is zoned River and is currently vacant (previously held uses included storage and the old stockyards - buildings have not yet been removed as of the writing of this report but the uses have ceased). The site is bordered by the French Broad River to the east, River District and Commercial Industrial-zoned parcels to the north, Commercial Industrial and RM-8 to the west and River District to the south. The immediate vicinity across Craven Street includes some single-family houses, commercial uses and vacant parcels (both residentially and commercially-zoned).

The proposal is to create a brewery with packaging, administrative and production facilities as well as retail, recreation and visitor uses. Plans indicate a total of 205,737 square feet divided between the production building (42', 2-stories, and 193,757 square feet – storage tanks up to 88') and the liquid center (28', 1-story, and 11,980 square feet). There is also a separate recycling building included in the overall square footage (60', 4,200 square feet).

Additionally the proposal includes space provided for truck access and loading/unloading, separate employee and visitor parking, an event lawn and an active greenway connection along the French Broad River. The site is loosely divided between production and employee uses to the north and visitor uses to the south.

Vehicles will access the site from three driveway cuts with one 40' driveway at the northern end for truck access. The 24' wide employee driveway and the 30' two-way visitor access point are both located towards the southern end of the site.

Parking is provided in three locations as well. The primary employee lot will provide 56 spaces (2 HC accessible); the visitor lot has 51 spaces (2 HC accessible) and 6 spaces are proposed near the loading area at the production center (1 HC accessible). There will be 50 bike spaces divided between two locations. **Note that plans show two alternatives for the employee surface parking lot. There is an interpretation currently under review at the State level prohibiting off-street parking under high voltage power lines. Plans provided address the desired layout with parking in the easement location but also moved outside that area in case the interpretation stays as written.

There are abundant pedestrian pathways into and throughout the site and sidewalks are to be provided along the entire frontage of the property as a part of the separate Major Subdivision submittal.

Landscaping is required for this project and will include street trees, street buffer, parking lot landscaping, building impact landscaping, screening of loading docks and preservation of landscaping in the required River Resource Yard (an area designated to preserve existing tree stands for river bank stabilization, erosion control and improved water quality). Due to existing Progress Energy transmission lines, the spacing and composition of the street trees and other landscaping up towards Craven Street in these areas may need to be varied in order to comply with utility company restrictions.

Fifteen percent of the total lot area is required to be dedicated as open space, which would be 2.97 acres for this site. More than the minimum is proposed, with at least 3.16 acres shown on the plans. Developments in the River District are required to provide a River Resource Yard and this location is shown on the plans coinciding with the setback from the French Broad River and encompasses dedicated open space as well as a greenway path.

*Modifications:* The applicant is requesting the following standards to be modified, based on the unique features of the site and use:

1. *Driveway Width* - The maximum driveway width allowed per the UDO is 24 feet at the throat and 36 feet at the radii. Plans indicate a 40 foot throat / 100 foot radius at the truck entrance; a 30 foot / 75 foot radius with a raised median at the visitor parking access and a driveway with a 50 foot radius at the employee access.

2. *Building Height* - Maximum building height allowed is 60 feet in the River; the malt building maximum height is 77 feet and the storage and production tanks are 88 feet maximum.

3. *Landscaping* - Restrictions from planting around Progress Energy lines along Craven Street may necessitate alternative spacing of street trees as well as a break in the continuous buffer for the loading area and street buffer. Additionally, the applicant is requesting to plant shrubs instead of trees in the loading dock screening and some smaller street trees under the transmission lines.

A separate Major Subdivision application has been approved by the TRC and Planning & Zoning Commission and includes the infrastructure improvements to be performed by the City of Asheville, such as roadway improvements and realignments along Craven Street, Emma Road and other intersections along the project site. This submittal also includes two public parking locations north of the site, the sidewalks and greenway connection, on-street parking along Craven Street and stream restoration interior to the site.

This proposal was approved with conditions by the Technical Review Committee on November 19, 2012. Evaluation by the River District Design Review Committee occurred on November 28, 2012 and by the Asheville Area Riverfront Redevelopment Commission on January 10, 2013 (unanimously supported). Although not technically required, the overall project was brought before the Greenways Commission on December 13th to receive their informal support and comment (comments included a desire to see connections to and from the river onto the site and greenway).

The Planning and Zoning Commission discussed this proposal at their meeting on January 2, 2013. Significant community comment was expressed relating to the impact of increased traffic that would be generated by this development, with particular emphasis on the designated truck routes. Speakers were particularly concerned about heavy truck traffic along Haywood Road, with issues and concerns relating to safety for both pedestrians and bicycle users and impact to the historic commercial and residential character of the corridor. The Commissioners voted 4-2 in support of the project and modifications but recommended adding the following conditions: 1.) Annual review of the truck routes and traffic impacts will be required

until full build out, with reports to both the Planning & Zoning Commission as well as City Council; 2.) NBB should try to minimize the radius and width of the visitor and employee driveways to increase pedestrian safety; and 3.) NBB should divert the approximately 70% of the truck traffic that is under their control off of Haywood Road and onto the designated alternate route.

Since the Commission hearing, City staff has been meeting with community members and working towards better understanding of the issues and towards alternative solutions. City staff support conditions 1 and 2, but the staff does not recommend that Council support condition number three. Staff does recommend that Council include a condition that NBB will contribute $50,000 towards the construction of sidewalks along Haywood Road.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The bulk of the site has been previously graded through its past uses, including the old WNC stockyard and most recently as a mini-storage facility and auction house. Building placement and impervious development is sited outside of the 50 foot setback from the river and respects the required River Resource Yard, which preserves and maintains existing vegetation to stabilize the riverbank, aid in erosion control and improve water quality. There is a separate project submittal addressing stream restoration in the interior portion of the site. The overall project is quite sensitive to the natural features and incorporates many features to improve and respect water quality and natural resources.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The overall proposal includes multiple upgrades and amenities that should enhance the value of the area and should not injure the value of adjoining or abutting properties. The development is sited so that the manufacturing portion is aligned with adjacent Commercial Industrial-zoned properties and is set back from the road, screened with vegetation. Improvements proposed with the associated submittal will enhance access to the area through the realignment of Craven Street and multiple intersections and the inclusion of bike lanes and sidewalks as well as will provide upgrades to the water line. Increased traffic and truck routes have been identified as a community concern.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The proposed manufacturing, retail and recreation uses are all supported by the River zoning district and City-adopted plans as stated earlier in this report. The development of the site is designed to respect the required setbacks from the French Broad River and maximize the river and designated open space as amenities. Additionally, the production

aspect of the use is sited on the northern end of the parcel, closer to adjacent Commercial Industrial zoning with parking and open space providing a "buffer" against the nearby residential zoning at the southern end of the site. While there are requested height modifications above the 60 foot maximum in the zoning district; they are only for a portion of the production building and the majority of the structures are well under the maximum height allowed. The design of the buildings should compliment the character of the area, relating to the history of manufacturing along the river while incorporating contemporary and unique design elements (example reused beer bottle bottoms pressed into exterior walls of production building).

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
Elements of the overall project are directly aligned with the City's goals and objectives including enhancing the riverfront, infill development on a brownfields location, supporting a manufacturing use, multiple multi-modal transportation elements, job creation, economic and community investment, emphasis on water quality and stormwater best practices, recreational amenities with a greenway segment and related infrastructure improvements in the vicinity.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The site is located in an area supported by transit (W1 & W2) and accessible by vehicle. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process. Associated infrastructure improvements will enhance multi-modal access, emergency protection, waste disposal and water supply.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The draft traffic impact study has been submitted and is currently being reviewed by the Transportation Department. The purpose of the TIS is to determine the possible impacts that the project will have on the surrounding street network when the business opens in 2015 and at full buildout in 2022 and to identify any mitigation improvements that might be needed. In addition, this specific TIS is providing a comprehensive review of potential traffic generated by the project and it will address concerns that are raised by the nearby neighborhoods. The primary truck access has been identified as Haywood Road because it is classified as a minor arterial and it provides the most direct access between I-240 and the site. At this time, certain mitigation improvements have been identified and will be addressed by the developer of the project, the City of Asheville, and the North Carolina Department of Transportation.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The proposal revitalizes an adopted brownfields site and is in an area targeted by multiple City plans as an ideal location for development
- The brewery and retail use creates jobs and supports the region's growing craft beer reputation
- The overall project includes construction of a greenway segment along the French Broad River
- The site layout includes significant open space and preservation of existing vegetation, especially along the riverbed to stabilize the bank and improve water quality and erosion

- Multi-modal design features are incorporated into the design, including abundant bike parking and a transit shelter. Related infrastructure improvements will result in bike lanes and ADA-compliant sidewalks along Craven Street

Cons:

- Due to the unique use and site constraints, plans do not comply with height standards for a portion of the production facilities, landscaping requirements and driveway widths.
- Community concern has been expressed regarding the impacts from increased traffic and truck routes along Haywood Road

Staff recommends approval of the Level III development proposal for the New Belgium Brewing Company, subject to the conditions recommended by City staff, standard conditions, and conditions imposed by the Planning & Zoning Commission.

Executive Director of Public Works and Multimodal Transportation Cathy Ball said that surrounding elements of the project are being done in part by the City of Asheville, made possible with easements granted by New Belgium and a large part associated with grants. Council will not be voting on the City components of the project that are really elements to improve the entire area. Using the New Belgium presentation (Applicant Exhibit 1), Ms. Ball showed the elements that the City of Asheville will be constructing as part of the Craven Street improvements. This includes Craven Street, a realignment of the intersection coming off the Craven Street Bridge and Hazel Mill Road, a low impact development parking lot, a greenway along the River, as well as some much needed stream restoration and improvements. These are components of the project that will be constructed by the City. We are running along the same timeframe. This is a Complete Street, which showed sidewalk, parking, bike lanes on both sides, canopy trees, etc. She explained the greenway element, which will form as a trailhead at the low impact parking lot area and will go in between the New Belgium Brewery and the French Broad River. It will not have any connection to the Brewery itself for safety and security reasons. At the other end of the greenway there will be two bus stops at that location on Haywood Road. There is a jurisdictional map stream that runs through the center of the property. New Belgium has worked with the City and she thanked the Clean Water Management Trust Fund for providing a $400,000 grant to allow these improvements to occur. The improvements consist of improving that jurisdictional stream, which most of the segment is piped, and allowing for the stream to take a natural flow and to be able to clean out most of the sediments from a real urbanized watershed. In working with Buncombe County, there is a piece of property that they own that we are looking at putting in a low impact parking lot so that people can access the greenway from that location.

Ms. Ball then proceeded with the presentation for Council to consider (1) a budget amendment in the amount of $220,000 to construct multi-model improvements on Haywood Road; and (2) Resolution in support of prioritizing future funding of the RADTIP to increase the clearance of the Riverside Drive railroad overpass (if feasible) and improve the radius at the Craven Street Bridge and Riverside Drive in both directions to allow for large trucks to turn, as the first funded components of the project (City Exhibit 6 - PowerPoint).

As part of the New Belgium Brewery (NBB) development large truck traffic will utilize Haywood Road from the Haywood Road Bridge to I-240. The first year of operation 6 additional trucks (12 trips) will be added to Haywood Road per day. Upon full build-out in 2022, 52 trucks (104 trips) trucks would service the NBB site. The draft traffic impact study has determined that if all the trucks at full build-out were routed on Haywood Road it would double the number of large vehicles that currently use the roadway today.

Staff has been meeting with several neighborhood groups over the past six months to discuss the impact the NBB project would have on the groups they represent. These groups include the East West Asheville Neighborhood Association (EWANA), West End Clingman Neighborhood (WECAN), Haywood Road Business Association, Asheville on Bikes, River Arts Business Association and the Emma community.

The original traffic study completed considered the primary truck route from the Craven Street Bridge north to Riverside Drive and Hill Street. This route was not feasible because large trucks could not make the turn from the Craven Street Bridge to Riverside Drive, and the railroad underpass has only 13 feet of clearance when a minimum of 13.5 feet would be required for large truck access on Riverside Drive.

It is hopeful that from 2015 (opening of NBB) to 2022 (full build-out) that some funding for RADTIP will be obtained so that Riverside Road would be an option for large trucks. RADTIP as it currently is planned, would improve the turning radius at the Craven Street Bridge and Riverside Drive in both the north and south directions. It currently does not, however, include changes to provide more clearance between the road and the railroad bridge to allow for taller trucks.

While the traffic study indicates that Haywood Road can handle the additional truck traffic, the additional trucks would create more conflicts for other users of the roadway including bikes and pedestrians. The Planning & Zoning Commission, during their January 2, 2013 meeting, recommended a condition that would disperse traffic on other routes in an effort to mitigate this impact. While the intent of this recommendation was supported city staff and most stakeholders, the method for mitigation may not be the most appropriate or effective solution. Since the January P&Z meeting, staff, NBB and the neighborhood have been working to develop ways to mitigate this impact through other means. These alternatives items are summarized in the action items listed below for consideration by City Council.

- Adopt a budget amendment in the amount of $220,000 to construct a sidewalk, climbing lane and sharrows on Haywood Road from the West Asheville RiverLink Bridge to Beecham's Curve. The project would be funded jointly by the City and NBB. The City's portion of the funding would come from unallocated capital project savings that are being held in reserve. These improvements will allow safer multi-model use of Haywood Road.

- Direct staff to include the feasibility of increasing the scope of RADTIP to include increasing the clearance of the railroad bridge and Riverside Drive. The feasibility study would include the consideration of lowering the roadway, decreasing the clearance of the railroad bridge, replacing the railroad bridge, etc. This option would not only improve large truck access to the NBB site but would also support current and future developments along the river. Staff would be directed to provide results from this feasibility study as soon as it is available, assuming that the feasibility portion of the work would be complete before the 70% RADTIP drawings are complete.

- Adopt a resolution stating that when RADTIP is funded, this component be funded for construction first. Along with this, the additional component of improving the radius at the Craven Street Bridge and Riverside Drive in both directions (already included in RADTIP). If it is determined that the clearance of the overpass is not feasible, the radius improvements at the Craven Street Bridge and Riverside would receive priority RADTIP funding.

- Direct staff to study one-waying Clingman Avenue Extension and Roberts Street.

- Direct staff to evaluate ways to mitigate truck traffic on Hanover Street.

- Support the Planning and Zoning Commission's recommendation to perform an evaluation of the truck traffic on Haywood Road and report back in one year from the opening of NBB.

- Not support Planning and Zoning Commission's recommendation that the truck traffic be split 30% Haywood Road and 70% other routes (see Planning Department staff report for description of the Planning and Zoning Commission meeting, deliberation and recommendation).

This action meets Council goals by enhancing the City's long-term financial commitment to infrastructure maintenance and capital improvements. Additionally, this project leverages internal and external partnerships for pursuing capital improvements and infrastructure projects.

Pros:

- Provides for multi-model transportation improvements on Haywood Road which is prioritized for bike and pedestrian improvements.
- Establishes a defined plan for evaluating the feasibility of increasing the clearance of the opening between Riverside Drive and the railroad overpass. Not only will this allow for better large truck traffic routing for New Belgium but will also accommodate current and future businesses in the area.
- Address the need to further evaluate ways to diversify and mitigate truck traffic on Haywood Road.
- Prioritizes for construction the radius improvements and the bridge clearance, accommodating a variety of trucks and other vehicles for all businesses in the area.

Con:

- We will not know the likelihood of increasing the clearance between the railroad bridge and Riverside Drive until the feasibility study is complete.
- Requires an appropriation from unallocated capital project reserves.

The multi-model improvements for Haywood Road from the Haywood Road Bridge to Beecham's curve are estimated to cost approximately $220,000. New Belgium Brewery will contribute $50,000 toward the project. The City will fund $170,000 of the cost through an appropriation from unallocated capital project savings that are being held in reserve. There is currently $305,000 available in capital reserves; after this appropriation, there will be $135,000 remaining. Staff recommends that this remaining balance be allocated as part of the FY 2013-14 Capital Improvement Program.

The additional cost to expand the feasibility study to increase the clearance of the Riverside Drive Railroad overpass is unknown and will be covered within the project budget.

Staff recommends City Council consider the following:

- Adopt a budget amendment in the amount of $220,000 to construct a sidewalk, climbing lane and sharrows on Haywood Road from the West Asheville RiverLink Bridge to Beecham's Curve. The project would be funded jointly by the City and NBB. The City's portion of the funding would come from unallocated capital project savings that are being held in reserve. These improvements will allow safer multi-model use of Haywood Road.

- Direct staff to include the feasibility of increasing the scope of RADTIP to include increasing the clearance of the railroad bridge and Riverside Drive. The feasibility study would include the consideration of lowering the roadway, decreasing the clearance of the railroad bridge, replacing the railroad bridge, etc. This option would not only improve large truck access to the NBB site but would also support current and future developments along the river. Staff would be directed to provide results from this feasibility study as soon as it is available, assuming that the feasibility portion of the work would be complete before the 70% RADTIP drawings are complete.

- Adopt a resolution stating that when RADTIP is funded, this component be funded for construction first. Along with this, the additional component of improving the radius at the

Craven Street Bridge and Riverside Drive in both directions (already included in RADTIP). If it is determined that the clearance of the overpass is not feasible, the radius improvements at the Craven Street Bridge and Riverside would receive priority RADTIP funding.

- Direct staff to study one-waying Clingman Avenue Extension and Roberts Street.
- Direct staff to evaluate ways to mitigate truck traffic on Hanover Street.
- Support the Planning and Zoning Commission's recommendation to perform an evaluation of the truck traffic on Haywood Road and report back in one year from the opening of NBB.
- Not support Planning and Zoning Commission's recommendation that the truck traffic be split 30% Haywood Road and 70% other routes (see Planning Department staff report for description of the Planning and Zoning Commission meeting, deliberation and recommendation). On the 70% split, the only option for that traffic now is to go on Amboy Road and that section of roadway (from the City's prospective) has a park and a lot of children crossing the street.

Mr. Edwin Fowler, representing New Belgium as the project manager, highlighted some of the best steps they have taken to get to this point. They have made tangible commitments to involve the community in all aspects of the process. They hosted open houses, gathered community feedback and are meeting regularly to help guide their path and become good neighbors. They are involved with many community organizations. They have also committed to searching for and hiring local design consultants, contractors, artists and photographers and each of these companies we have partnered with to date has committed to do the same throughout the development process. The development process contains many concepts, design elements and sustainable features that go beyond the standards and requirements for similar developments. We have partnered with the City to develop shared stormwater bioswales, remediate the stream that bisects the site and further the development of the regional greenway plan. We have also planning buildings that are energy efficient and are being designed to fit within the culture of the community while incorporating materials that are soon to be deconstructed from the existing site. These steps represent the foundation and partnerships moving forward.

Ms. Susan Freyler, representing the design team for the Level III project, walked Council through the site addressing specific design elements (Applicant Exhibit 1). The upper portion of the site is the public portion that contains the Liquid Center, the associated visitor parking, an event lawn and pavilion, and perhaps an orchard or some other edible landscaping, as well as where we can use as much native material as possible. There are all walks through the site. The lower half of the site is more of the private side in that it has the production facility, loading docks, recycling area, fermentation tanks, malt building, etc. The Liquid Center will be placed at the top of the bank overlooking the French Broad River. She then explained the three modifications requested and the need for them.

Mr. David Geiser, design architect for the project, spoke to Council about the architecture on the site (Applicant Exhibit 1), worked with New Belgium to make it pleasing and a better neighborhood within the community. He explained the malt building, the brew house, the fermentation tanks, production and support (labs, maintenance facilities, etc.), administrative wing and packaging facility. Efforts have been made to reduce the scale of the building to make it more friendly. He showed views of the project site and said they have tried to introduce as much glass into the two facilities to bring daylight in and for the public to get a glimpse of what is going on inside. He outlined some of the sustainable strategies they are working on - reused/re-purposed materials from project site; local materials; daylight harvesting for interior spaces; clean construction strategies; LEED certification; brownfield revitalization; stormwater treatment in bioswales and bioretention areas; use native plants; approximately ¾ mile from City bus stop;

adjacent to greenway; ground source heat pumps for the Liquid Center; rainwater harvesting; solar domestic hot water; exhaust air energy recovery; and mixed mode ventilation to use natural ventilation for portions of the year.

Mr. Gabe Quesinberry, Mattern & Craig Traffic Engineer that performed the TIS, provided Council with a history of the traffic process, using the off-site improvements and proposed truck routes map found in Applicant Exhibit 1. The initial study identified five potential routing options. Each route was based on the same factors. Through the ranking, the Haywood Road route was the primary route with the Roberts Street/Lyman/Amboy Road as the secondary route. In July we held a meeting at the US Cellular Center and explained the two routes. In October community meetings were held to help define the scope of the technical TIS. Using this feedback, they developed a scope which included a normal TIS process and an expanded community look at the short term and long term impacts for the project. As part of the study, we assumed the worse case scenario that all the trucks would be on Haywood Road. They also looked at the visitor traffic - estimated 100,000 visitors per year to the Liquid Center, and the employee traffic to the facility. It will be a phased opening and they accounted for that in their study. As a result, the current traffic on Haywood Road at I-240 is now 12,000 average daily traffic - .7% of that traffic is classified as trucks. At Craven Street that number is about 8,000 vehicles per day currently - .7%. At full buildout, at I-240, this will increase to 16 trips per day (1.2% truck traffic) and at Craven Street, the number will increase to 11,000 per day - 1.7% classified as trucks. In additional to the improvements Ms. Ball outlined, the off-site improvements will also include turning improvements at Roberts Street and Lyman to allow the radius improvements to allow truck maneuvers there. The Beecham's curve traffic signal project was already in the planning stages for some time. In addition, NC DOT will also be constructing some widening at the I-240 ramps at Hanover Street. They also recognize that there is a need in the City's infrastructure to diversify the routes for commercial trucks. We also identified what potential future projects would diversify feasibly future traffic within the River District, west Asheville and the surrounding areas. The most logical point of that is the RADTIP project. New Belgium is supportive of the RADTIP.

Mr. Jay Richardson, General Manager of New Belgium in Asheville, said that it's clear that the community has helped New Belgium reach the point they are at now. There has been a collaboration of business and neighborhood associations, non-profits, advocacy groups, in conjunction with City staff. This is what can be accomplished with honest dialogue. The culture and values of the City of Asheville will align very closely with that of New Belgium. The neighbors have welcomed and challenged them. Going forward there will be aspects of their business that will require discussion and they look forward to being as collaborative then as we have been to date. We don't view our relationship with the community as just a means to get approval - we view those as beginning of long-term relationships. On behalf of New Belgium, we are excited to make this project successful and to make our neighbors happy.

Councilman Hunt felt that protected bike lanes are more functional than stripped lanes that are immediately next to traffic. He asked City staff to consider (and report back), on Haywood Road, one sidewalk and a protected climbing bike lane on the other side. Ms. Ball said that she would be happy to look at that.

Councilman Smith asked that as we look at a possible protected bike lane that we look at street cross infrastructure.

In response to Councilman Bothwell, Mr. Fowler said that they have not selected a site for the distribution center yet. They looked at some operational ways to make the Riverside Drive north work. Using a lower height truck is something that New Belgium can do without a big operational impact, but that does not make the route usable. The bigger concern is we can't have a 53-foot box truck to make the turn. Our distribution team looked into it and they can make the turn with a 32-foot box truck, but the problem with that is that it results in 40% more trucks. That is 40% more diesel and then buying another tractor and another drive. That has a large long-

term operational impact. If that intersection were improved under the proposed RADTIP project, that would resolve that issue.

When Councilman Hunt asked what would be the timetable New Belgium would need to decide on the height of the trucks to use, Mr. Fowler said sometime in the 2014-15 range. There is some time before the trucking contacts would be finalized.

The following individuals welcomed New Belgium to Asheville and supported the project, but expressed concern mainly regarding the primary truck access of Haywood Road. Some concerns/questions/comments expressed included: high volume trucking route on Haywood Road from the French Broad River to I-240; considerable safety impacts to walkers, bikers and commuters; noise and pollution burden on neighborhood residents and businesses; impact on property values and future development along the corridor, including plans for high density, mixed-use development; need alternative solution for a trucking route north on Riverside Drive; urge Council to immediately fund and approve the purchase of rights-of-way and re-engineering intersection of Craven Street/Riverside Drive/W. Haywood Road to allow adequate turning radius for long bodied trucks; attention to misaligned sewer grates along Haywood Road that are creating bicycle hazards; develop design plans with community input; study pedestrian safety improvements for the neighborhoods off of Waynesville Avenue; request for earlier process for citizen engagement; many businesses on Haywood Road have pull-in parking, which requires backing out onto Haywood Road; there are 15 City bus stops between Craven Street and I-240 and when the bus stops, all traffic stops; there are 4-8 public schools stops between Craven Street and I-240 and fear for children safety since they are standing at the road; there is not a minimal impact of trucks as seen from the TIS numbers; concern about construction truck traffic at Hanover and Haywood especially with a pre-school across the street; New Belgium will bring other businesses to the area; WECAN would like their neighborhood developed as laid out in their Master Plan - including more affordable infill development, safer pedestrian access and routes, multimodal transit, and ecological restoration enhancing the public experience; seek commitment from NC DOT and City to prioritize developing Haywood Road as a compliment to Clingman Avenue serving as a continuous multimodal mixed-use corridor; broaden language to complete a feasibility study that identifies how to provide straight vehicle access to I-240 in the shortest possible route without crossing through neighborhood corridors; WECAN does not currently see the need to change the Clingman Extension and Roberts Street one-way; actively pursue routes with less impact while using the Haywood Road route as the immediate route; explore the option of lowering the grade under the Norfolk Southern Railroad crossing at Riverside Drive; do not support the Planning & Zoning Commission's recommendation to split the brewery traffic 30% Haywood and 70% other routes as this is unrealistic as a condition on New Belgium; New Belgium supports multimodal transportation infrastructure, finances greenways, providing environmental clean-up, sponsorship of community events, providing meaningful jobs and training, and dedication to stream and river health; New Belgium will be a partner to help with support for infrastructure changes; encourage New Belgium to use lower height trucks; when infrastructure changes are made, ensure that crosswalks are brought up to Code and that includes conditions for the handicapped and blind; request that the rail height as Haywood Road crosses over I-240 be raised; New Belgium is a good project that offers greenways, advanced site development, environmental cleanup, construction jobs, community investment and employment opportunities for many of our citizens; the 88 foot height of the 50 fermenting tanks will be higher than the Jeffrey Bowen Bridge; the trestle over Riverside Drive reads 13 feet (we need 13.6 clearance for trucks) but measurement of the trestle in 10 different locations under the bridge reveals ranges from 13.4-13.11 feet; this type development is not good for the type of slow, steady growth in West Asheville; thoroughly examine opportunities to eliminate or mitigate deficiencies in our commercial corridors that inhibit economic redevelopment, including the low clearance issue at the Norfolk Southern bridge and substandard design and placement of the Amboy Road (at Lyman Street) bridge; New Belgium is a transformational project at the core of our regional riverfront redevelopment area; negative impacts are indicators of larger economic development and neighborhood planning issues and need to be addressed in a comprehensive manner, separate from the review of this project; visitors, employees and cut-through traffic will

use Waynesville Avenue which has no sidewalks and has blind curves; New Belgium has projected 154 direct new jobs and support 260 indirect jobs among local businesses, generating new annual labor income for families of Asheville; Haywood Road Pedestrian and Bicycle Safety Audit shows that Haywood Road falls short of meeting Americans with Disabilities Act compliance and makes travel along the corridor dangerous for all modes - we need NC DOT support and investment; and Wilma Dykeman envisioned this type of development on the River:

Mr. Joshua Martin, member of East West Asheville Neighborhood Association (Neighborhood Exhibit 1)
Ms. Ava Carr, member of East West Asheville Neighborhood Association
Mr. Rich Lee, member of East West Asheville Neighborhood Association (Neighborhood Exhibit 2)
Mr. Wilson, member of East West Asheville Neighborhood Association
Mr. Tom Burnette, member of East West Asheville Neighborhood Association
Mr. Stuart Green, representing the Emma community
Ms. Rachael Larson, representing West End Clingman Avenue Neighborhood Association
Mr. Trip Howell, representing River Arts District Business Association
Ms. Alice Oglesby, representing West Asheville Business Association
Mr. Rod Hudgens, representing the Council of Independent Business Owners
Mr. Jonathan Wainscott, representing West Asheville Watch
Mr. Joe Ferikes, representing Asheville Area Riverfront Redevelopment Commission
Mr. Scott Caranna, resident on Waynesville Avenue
Mr. Clark Duncan, representing the Economic Development Coalition
Mr. Mike Soule, representing Asheville on Bikes
Ms. Karen Cragnolin, Executive Director of RiverLink

After hearing no rebuttal, Vice-Mayor Manheimer closed the public hearing at 10:51 p.m.

City Attorney Oast said that Council has heard information, mostly from Ms. Ball, about potential future improvements along Riverside Drive. He advised Council to base their decision with that caution in mind.

Councilman Bothwell felt that the problems presented are solvable.

Vice-Mayor Manheimer was pleased to see that the neighborhoods and different organizations worked with the City and New Belgium towards a great compromise. New Belgium is the kind of business we are lucky to have interested in Asheville and we hope they are not the last. Their experience with us should send some sort of indication to other great businesses that may be interested in coming to Asheville that you can work with the City and our neighborhoods and achieve a great compromise. Our RADTIP program is a fantastic program aimed at revitalizing our River District just so that it can in part be a home to future great businesses that will contribute to the fabric of Asheville.

Councilman Hunt felt this has been an incredibly healthy process and the quality dialogue and strategic vision of neighborhoods and business associations have been awesome.

Councilman Bothwell found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4160, to approve the conditional use permit adopting the proposed master plan for the New Belgium Brewing Company subject to the conditions recommended by City staff, and the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10 of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with this

ordinance, will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (6) New Belgium Brewery is to construct one transit shelter on a concrete ADA pad built by the City on the east-bound side of Haywood Road, just southwest of Craven Street; (7) New Belgium Brewery will contribute $50,000 towards the construction of sidewalks along Haywood Road to aid in pedestrian safety along the designated truck route; (8) Annual review of the truck routes and traffic impacts will be required until full build out, with reports to both the Planning & Zoning Commission as well as City Council; and (9) NBB should minimize the radius and width of the employee and visitor driveways to increase pedestrian safety. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 122**

Vice-Mayor Manheimer said that members of Council have been previously furnished copies of the resolution and ordinance and they would not be read.

Councilman Bothwell moved for the adoption of Ordinance No. 4161, in the amount of $220,000, to construct a sidewalk, climbing lane and sharrows on Haywood Road from the West Asheville RiverLink Bridge to Beecham's Curve. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 134**

Councilman Smith was pleased that New Belgium will investigate the use of smaller trucks to get down to the solution - Riverside Drive. In the past the City has had mixed results in working with the railroad, but it was his hope that since we have the City, the County, the Economic Development Coalition, New Belgium and the Governor's Office that we will be able to work successfully with the railroad and find the solution at Riverside Drive. That will also lay the groundwork for a lot of future development in our River District. He did think that Waynesville Avenue will be affected. We may be able to post no through trucks, but ultimately we need to make sure that we have really good wayfinding to get to the Brewery and that the trucks are not using Haywood so cars feel that they need to use cut-through streets. He hoped that Council will consider both the protected bike lane and sidewalks on Haywood Road. He supported seeing the Craven Street turning radius to be improved, fixing the sewer grates on Haywood Road, and a Complete Street from Beecham's Curve to I-240.

City Manager Jackson confirmed it was the consensus of Council to do the alternative analysis of Haywood, looking at a separated bike lane and also evaluating in more detail the options for bringing about the safest solution on Haywood. Staff will bring that report back to Council. He also noted that the City will continue to work with the East West Asheville Neighborhood Association to explore traffic calming and evaluate the feasibility and the neighborhood consensus for those improvements.

Councilman Bothwell moved (1) for the adoption of Resolution No. 13-16, in support of prioritizing future funding of the RADTIP to increase the clearance of the Riverside Drive railroad overpass (if feasible) and improve the radius at the Craven Street Bridge and Riverside Drive in both directions to allow for large trucks to turn, as the first funded components of the project; (2) to direct staff to include the feasibility of increasing the scope of RADTIP to include increasing the clearance of the railroad bridge and Riverside Drive. The feasibility study would include the consideration of lowering the roadway, decreasing the clearance of the railroad bridge, replacing the railroad bridge, etc. This option would not only improve large truck access to the NBB site but would also support current and future developments along the river. Staff would be directed to

provide results from this feasibility study as soon as it is available, assuming that the feasibility portion of the work would be complete before the 70% RADTIP drawings are complete; (3) to direct staff to study one-waying Clingman Avenue Extension and Roberts Street; (4) to direct staff to evaluate ways to mitigate truck traffic on Hanover Street; and (5) to support the Planning and Zoning Commission's recommendation to perform an evaluation of the truck traffic on Haywood Road and report back in one year from the opening of NBB. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 165**

**V. UNFINISHED BUSINESS:**

**A. RESOLUTION NO. 13-17 - RESOLUTION AUTHORIZING THE CITY MANAGER TO INCLUDE THE MUNICIPAL FOOD POLICY GOALS AND ACTION PLAN INTO THE PREVIOUSLY ADOPTED SUSTAINABILITY MANAGEMENT PLAN**

Sustainability Program Manager Maggie Ullman said that this is the consideration of a resolution authorizing the City Manager to include the Municipal Food Policy Goals and Action Plan into the previously adopted Sustainability Management Plan.

In April 2012 Council directed the Sustainability Advisory Committee on Energy and the Environment (SACEE) to work with community members of the Asheville Buncombe Food Policy Council (ABFPC) to evaluate how food security strategies may be integrated into the city's Sustainability Management Plan. The Sustainability Management Plan (SMP) was adopted in June 2009 as the road map for municipal sustainability.

SACEE went through a due diligence process to research and assess how the municipality could contribute in order to compliment the larger community effort. This process included: national best practice research, presentations from regional experts, regular updates from ABFPC during SACEE meetings, reviewing the ABFPC's strategic plan, and ultimately co-creating the proposed action plan. The proposed municipal goals and action plan are a subset strategically selected for the municipality from the wide range of goals and activities identified by the ABFPC.

Through this resolution the proposed municipal action plan would be incorporated into the Sustainability Management Plan. With approval of this resolution the management process to evaluate, prioritize, and implement sustainability activities will be expanded to include food activities.

This resolution supports the following activities in the Strategic Operating Plan: 1) Consider leasing City-owned parcels to area farms and gardeners; 2) Support diversified job growth and business development.

Pro:

- This resolution contributes to Councils goal to be the southeastern leader in clean energy and environmental sustainability.

Con:

- None

There is no direct fiscal impact. Potential impacts from implementation of this plan will be considered by Council on an individual basis.

City staff recommends City Council adopt a resolution authorizing the City Manager to incorporate the Food Policy Goals and Action Plan into the previously adopted Sustainability Management Plan.

Ms. Susan Garrett, representative of the Asheville-Buncombe Food Policy Council, spoke in support of this action which will encourage urban agriculture and mobile markets which in turn help food-related economic development.

Councilman Smith was pleased to thank the many volunteers, especially Susan Garrett who has been a real leader, who have brought this extensive process to Council.

Mr. Tim Ballard, representing SACEE, thanked the Food Policy Council on the excellent work they did to engage the community. He encouraged City Council to adopt the resolution.

Vice-Mayor Manheimer said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 13-17. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 166**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 13-19 - RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABILITY ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Sustainable Advisory Committee on Energy & the Environment (SACEE).

The terms of Dane Barrager, Torin Kexel and Jane Mathews, expired on December 31, 2012. Mr. Barrager is not interested in serving another term and Ms. Mathews is not eligible to serve another term.

The following individuals have applied for the vacancies: Charles Rosenblum, Peter Brezny, Marcus Renner, Lawrence Pittman, Alan Watts, Brandee Boggs, Melita Kyriakou, Stuart Smith, Timothy Sadler, Josh O'Conner, Forrest Patrick Merithew, Sabrina Wells, Christine Laporte and Robert Brady.

On January 8, 2013, it was the consensus of Council (1) reappoint Torin Kexel; and (2) interview Josh O'Conner, Brandee Boggs, Marcus Renner and Lawrence Pittman.

After Council spoke highly of the candidates, Josh O'Conner received 3 votes, Brandee Boggs received 3 votes, Marcus Renner received 3 votes and Lawrence Pittman received 4 votes. Because of a tie for the second seat, another vote as follows was taken: Josh O'Conner received 4 votes, Brandee Boggs received 1 vote and Marcus Renner received 1 vote. Therefore, Josh O'Conner and Lawrence Pittman were appointed as members of SACEE to serve each serve a three-year term respectively, terms to expire December 31, 2015, or until their successors have been appointed.

In addition, it was the consensus of Council to reappoint Torin Kexel to SACEE to serve an additional three-year term, term to expire December 31, 2015, or until his successor is appointed.

**RESOLUTION BOOK NO. 35 – PAGE 170**

**B. RESOLUTION NO. 13-20 - RESOLUTION APPOINTING MEMBERS TO THE DOWNTOWN COMMISSION**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Downtown Commission.

The terms of Bruce Hazzard, Rebecca Hecht, Guadalupe Chavarria and Matthew Sprouse expired on December 31, 2012.

The following individuals have applied for the vacancies: Edward Loewe, Patric Mullen, Karl Katterjohn, Dean Pistor, Laurie Miller, Andrew Montrie, Adam Bowers, Luther Smith, Dane Barrager and Larry Holt.

On January 8, 2013, it was the consensus of Council to reappoint Bruce Hazzard, Rebecca Hecht and Matthew Sprouse and postpone the final vacancy for further clarification. The Boards and Commissions Committee recommends appointment of Dane Barrager.

Councilman Bothwell moved to (1) reappoint Bruce Hazzard, Rebecca Hecht and Matthew Sprouse to the Downtown Commission to each serve an additional three-year term respectively, terms to expire December 31, 2015, or until their successors are appointed; and (2) appoint Dane Barrager to serve a three year term, term to expire December 31, 2015, or until his successor has been appointed. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 171**

**C. RESOLUTION NO. 13-21 - RESOLUTION APPOINTING MEMBERS TO THE GREENWAY COMMISSION**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Greenway Commission.

The terms of Glen Locascio and James Grode expired on December 31, 2012.

The following individuals have applied for the vacancies: Stuart Smith, Bryan Mitchell, Forrest Patrick Merithew, Adam Bowers and Luther Smith.

It was the consensus of the Boards & Commissions Committee to reappoint Mr. Grode and let Council vote on whether to appoint Mr. Stuart Smith or Mr. Bryan Mitchell.

After Council spoke highly of both candidates, Stuart Smith received 2 votes and Bryan Mitchell received 4 votes. Therefore, Bryan Mitchell was appointed to the Greenway Commission to serve a three year term, term to expire December 31, 2015, or until his successor is appointed and qualified.

In addition, it was the consensus of Council to reappoint James Grode to the Greenway Commission to serve an additional three-year term, term to expire December 31, 2015, or until his successor is appointed.

**RESOLUTION BOOK NO. 35 – PAGE 172**

**D. RESOLUTION NO. 13-22 - RESOLUTION APPOINTING MEMBERS TO THE TRANSIT COMMISSION**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Transit Commission.

The terms of Julie Mayfield, Georgia Shannon, Tom Tomlin and Paul Van Heden expired on December 31, 2012.

The following individuals have applied for the vacancies: Mark L. Harris, Bruce Emory, George E. Keller, Itiyopia Ewart and Bryan Mitchell.

On January 8, 2013, it was the consensus of was the consensus of Council to (1) reappoint Julie Mayfield and Tom Tomlin; (2) appoint Bruce Emory; and (3) interview Itiyopia Ewart and George Keller. However, due to federal requirements for the Transit Commission, the Committee recommended appointing Itiyopia Ewart. The Boards & Commissions Committee did not recommend reappointment of Ms. Georgia Shannon due to the failure to meet attendance requirements.

Councilman Hunt moved to (1) reappoint Julie Mayfield and Tom Tomlin to each serve a three-year term respectively, terms to expire December 31, 2015, or until their successors are appointed; and (2) appoint Bruce Emory and Itiyopia Ewart to each serve a three-year term respectively, terms to expire December 31, 2015, or until their successors are appointed. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 173**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Councilman Smith was proud of Asheville High School's marching band at the Presidential Inauguration on January 21 representing Asheville N.C.

**VIII. ADJOURNMENT:**

Vice-Mayor Manheimer adjourned the meeting at 11:25 p.m.

CITY CLERK MAYOR

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Tuesday – January 29, 2013 – 6:30 p.m.
Hall Fletcher Elementary School

Community Meeting – West Asheville

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Deputy City Clerk Jaime Matthews

Absent: None

Mayor Bellamy opened the meeting, welcomed the audience and introduced City Council members.

Planning & Development Director Judy Daniel provided Council with a progress report on the Haywood Road Corridor form based code project; and Urban Planner Alan Glines updated Council on the Haywood Road Vision Plan.

Executive Director of Public Works and Multimodal Transportation Cathy Ball updated the audience on the City's infrastructure improvement projects for the area.

The following individuals made presentations to Council:

Ms. Catherine Foster, representing the Pisgah View Residents Association
Ms. Elaine Poovey, representing the Malvern Hills Community Club
Ms. Vivian Conley, representing the Burton Street Community Association

Mayor Bellamy then opened up the meeting for questions. Questions/comments responded to by City staff and City Council consisted of (and those which could not be immediately responded to would be followed-up by City staff to the appropriate individual): request to include traffic calming on Bear Creek Road in the next budget cycle; request for sidewalks on Burton Street; East West Asheville Neighborhood Association is drafting by-laws; announcement of the May 9 I-26 meeting; need traffic calming in Malvern Hills; request for committee for wayfinding to the New Belgium Brewery; need for cheaper bus shelters so more can be installed; need for recycling bins downtown; what is the schedule for repaving streets in West Asheville; need community input for sidewalk changes on Vermont; discontinue fluoride in water; and need for community garden in public housing.

Mayor Bellamy and Council members expressed their appreciation for the community involvement.

At 8:30 p.m., Mayor Bellamy adjourned the meeting.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – February 12, 2013- 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Vice-Mayor Manheimer gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING FEBRUARY 12, 2013, AS "DARWIN DAY"**

Councilman Bothwell read the proclamation proclaiming February 12, 2013, as "Darwin Day" in the City of Asheville. He presented the proclamation to Ms. Jennifer Lovejoy.

**B. AWARD FROM UNITED STATES CONFERENCE OF MAYORS**

Mayor Bellamy was pleased to present Police Chief Anderson with a check, in the amount of $5,000, from the United States Conference of Mayors and Purdue Pharma LP. The City of Asheville won second place in the small city category of the 2013 Prescription Drug Abuse Recognition Program. She thanked Chief Anderson for his leadership in helping keep our children safe. Police Chief Anderson said that there will be another medicine drop-off scheduled soon.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON JANUARY 22, 2013; AND THE COMMUNITY MEETING HELD ON JANUARY 29, 2013**

**B. RESOLUTION NO. 13-23 - RESOLUTION AUTHORIZING THE CITY MANAGER ENTER INTO A CONTRACT WITH BRANTLEY CONSTRUCTION CO. LLC FOR PHASE III RENOVATIONS OF THE U.S. CELLULAR CENTER**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Brantley Construction Co., LLC in the amount of $1,876,000 for Phase III renovations of the U.S. Cellular Center.

This contract incorporates major components of the overall renovation of the ticket office, the main lobby, the outside plaza, the loading dock storage and ramp improvements. These renovations are a continuation of those that were started in preparation to host the Southern Conference Basketball Tournament through March 2014. These renovations will give patrons, entertainers, athletes and promoters a much improved experience when attending or scheduling

concerts, sporting events, major city wide conventions and other special events throughout the years to come.

The following bids (Base amount + 10 Alternates) were received on January 31, 2013:

1. Brantley Construction C., LLC $ 2,336,000
2. H&M Constructors $ 2,592,000

We have elected to accept the Base Bid plus Alternates 1, 2 & 7. The following shows the totals for both prospective bidders:

1. Brantley Construction Co., LLC $ 1,876,000
2. H&M Constructors $ 2,110,300

Funding for this portion of the contract was addressed with a budget amendment in the amount of $1,889,518 approved by City Council on December 11, 2012.

Staff is actively seeking grant opportunities to fund additional renovations to the facility in the next fiscal year.

This action complies with the City Council Strategic Operating Plan's Fiscal Responsibility goal of developing strategic partnerships to leverage resources for infrastructure and CIP projects. This action also complies with the Civic Center Commission Master Plan that encourages continuing renovations for the facility, and supports the goal of developing new partnerships. It has been reviewed and recommended by the Civic Center Commission.

Pros:

- Improved flow of patron traffic to and from the Explore Asheville.com arena and Thomas Wolfe auditorium.
- Much needed improvements to the ticket office and main lobby area.
- Increase in useable storage space with the added enclosed areas in the loading dock area.
- Enhancements to safety such as more exit doors, fires sprinklers in lobby and improved exiting flow.
- Project bid is below budget.

Con:

- None.

As noted above, the budget for this next phase of renovations was approved by City Council on December 11, 2012. Funding is coming from a variety of sources including, the City of Asheville, Buncombe County and the Tourism Development Authority (TDA).

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Brantley Construction Co., LLC for $ 1,876,000 for the Phase III renovations of the U.S. Cellular Center.

Councilman Davis was pleased to see this phase of the renovations and urged the public to attend the Southern Conference on March 8-11, 2013.

**RESOLUTION BOOK NO. 35 - PAGE 174**

**C. RESOLUTION NO. 13-24 - RESOLUTION AUTHORIZING THE EXCHANGE OF CITY-OWNED REAL PROPERTY LOCATED AT 166 RESERVOIR ROAD FOR PROPERTY OWNED BY THE BEAUCATCHER PURCHASE GROUP, LLC ALSO LOCATED OFF OF RESERVOIR ROAD**

Summary: The consideration of a resolution authorizing the exchange of City-owned real property at 166 Reservoir Road for property owned by the Beaucatcher Purchase Group, LLC also located off of Reservoir Road.

The City of Asheville is in need of property owned by the Beaucatcher Purchase Group, LLC in order to assemble the land necessary for the Beaucatcher Greenway. Accordingly, the City of Asheville and the Beaucatcher Purchase Group, LLC have negotiated an exchange of real property based on the terms outlined below. Pursuant to N. C. G. S. 160A-271 a notice was duly published in the Asheville Citizen-Times on February 1, 2013 describing the exchange of properties.

The property owned by the Beaucatcher Purchase Group, LLC is located off Reservoir Road and measures in total approximately 1.5 acres (PIN 9648-56-9395-00000). This undeveloped, wooded parcel serves as a natural buffer for the Wind in the Oaks community. The City seeks to construct a portion of the Beaucatcher Greenway within this parcel and has surveyed a 0.67 acre portion of the area to accommodate the future path.

In exchange for this property, the Beaucatcher Purchase Group requests that the City convey a 0.67 acre portion of property it owns at 166 Reservoir Road (PIN 9648-56-7084-00000). The City maintains two telecommunications towers at the 7.42 acre property, and the Beaucatcher Purchase Group would like to own a portion of this property to provide a Western buffer for the Wind in the Oaks community. The area of interest to the Beaucatcher Purchase Group will have no impact on the existing operations and does not appear to have any negative impact on any future development of the acreage. The Beaucatcher Purchase Group requests that the City's Arborist remove any and all dead trees from the property prior to the exchange. The value of the exchange of property is based on the following criteria: (1) Equivalent land area, (2) Proximate location, (3) Similar parcel configuration, (4) Identical highest and best use for each property – assemblage to adjoining tracts and (5) based on a 2009 appraisal of the City's property, relative market value of each parcel is approximately $3 per square foot or $87,500 for each 0.67 acre tract (unadjusted). Based on these factors, the exchange of property will be considered full and fair.

Assembling land needed for the Beaucatcher Greenway complies with City Council's Strategic Operating Plan in the area of Multimodal Transportation - to promote the development of pedestrian and bicycle infrastructure. Also, this action complies with the 2008 Parks, Recreation, Cultural Arts, and Greenways Master Plan in that it provides for further development of an existing greenway identified in the Master Plan.

Pro:

- Assemblage of land necessary for the implementation of the Beaucatcher Greenway.

Con:

- There is no negative impact.

The land exchange requires no additional compensation in that the parcels are of equivalent value. The City's legal office will perform the closing, therefore no additional costs are anticipated for this transaction.

City staff recommends City Council adopt a resolution authorizing the exchange of real properties located off of Reservoir Road.

Real Estate Manager Nikki Reid used a map of the land exchange to respond to various questions from Councilman Hunt, noting that both parcels are zoned RS-2.

**RESOLUTION BOOK NO. 35 - PAGE 175**

**D. RESOLUTION NO. 13-25 - RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY REAL PROPERTY OFF HAZZARD STREET TO RICKY BRIGGS**

Summary: The consideration of a resolution authorizing the City Manager to convey real property off Hazzard Street, PIN 964960134900000.

A bid has been received from Ricky Briggs in the amount of $1,000 for the purchase of 0.03 acres of City-owned land off Hazzard Street. This land parcel is one of three parcels donated to the City in 2001, by Sidney and Mary Schochet and Dale and Irwin Plisco. The parcels were remnants from Department of Transportation takings in connection with the construction of South Charlotte Street. The subject parcel is a rectangular shaped fragment lot comprising 0.03 acre±. It is zoned RM8, and it is not suitable to build on without additional land combination. The bid from Ricky Briggs is in the amount of $1,000 and an advertisement for upset bids was published in the paper on January 11, 2013. Within the 10 day notice period, no upset bids were received.

The Parks, Recreation and Cultural Arts Department has verified that this parcel does not lie within an existing or proposed greenway trail according to the Greenway Master Plan and therefore is not an advantageous property to be held for use by the City of Asheville.

This action complies with the City Council Strategic Operating Plan by supporting Fiscal Responsibility, through disposition of surplus real property at market value.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Con:

- There is no negative impact.

The proceeds from the sale of this parcel will benefit the General Fund and will be designated for future economic and community development projects,

Economic Development staff recommends adoption of the resolution to convey real property off Hazzard Street to Ricky Briggs.

**RESOLUTION BOOK NO. 35 - PAGE 176**

**E. RESOLUTION NO. 13-26 - RESOLUTION TO SUPPORT THE 2013-2015 FUNDING FOR CLEAN WATER MANAGEMENT TRUST FUND**

Summary: The consideration of a resolution in support of continued state funding of the Clean Water Management Trust Fund to fund current and future projects to protect our water supply.

The Clean Water Management Trust Fund (CWMTF) was established in 1996 by the General Assembly to address the growing concerns about the health of our rivers, streams, and other surface water in the state. The Clean Water Management Trust Fund is a non-regulatory, community focused program to protect and restore surface waters across the state. This non-regulatory program has provided more than 1500 grants to help meet the infrastructure needs of

municipalities, increased recreational opportunities, and enhance quality of life in this state. Meeting these needs helps the state obtain a competitive edge in economic development.

The City of Asheville has been the recipient of several CWMTF grants. Some of which include the Dingle Creek stream restoration and wetland construction, Ross Creek Watershed improvements, and most recently, regional stream mitigation improvements at the New Belgium Brewery site.

This action meets Council goals by enhancing the City's long-term financial commitment to infrastructure maintenance and capital improvements. Additionally, this project leverages internal and external partnerships for pursuing capital improvements and infrastructure projects.

Pro:

- The CWMTF provides funds for water quality improvements in the state, including the City of Asheville

Con:

- None

The CWMTF provides financial assistance for water quality improvements in the City. Without these funds, the City would be required to provide the funds or not complete projects that improve water quality in urbanized areas.

Staff requests that City Council adopt a resolution in support of continued state funding of the Clean Water Management Trust Fund to fund current and future projects to protect our water supply.

Mayor Bellamy spoke in support of this very important issue and of the many communities that need those additional dollars.

**RESOLUTION BOOK NO. 35 - PAGE 177**

**F. RESOLUTION NO. 13-27 - RESOLUTION AUTHORIZING THE PURCHASE OF AN APOLLO 4 GENERATION VIDEO CAMERA SYSTEM TO UPDATE AND STANDARDIZE THE EXISTING TRANSIT FLEET VIDEO CAMERA SYSTEM**

Summary: The consideration of a resolution authorizing staff to purchase an Apollo 4 Generation video camera system from Apollo Video Technology in order to update and standardize the existing transit fleet video camera system.

The current transit fleet video camera system is from Apollo Video Technology. Due to its age, many cameras and readers have malfunctioned and been replaced through the years. As a result, the fleet has four different generations of Apollo cameras on the buses and two different readers, which are used to review the videos. Some of the older readers have become unreliable, and in some cases operations has not been able to retrieve information due to system malfunction.

During the recent bus procurement process, all the new buses were equipped with an Apollo 4 generation video camera system and now, the other 14 buses need to be upgraded.

The Apollo 4 generation video camera system has the following features:

1) Larger removable hard drive for video storage.
2) Higher resolution on camera video.
3) More cameras can be added to the system for future expansion to improve video data collection (i.e. expand from our current 4-camera system to a 6-camera system).

4) Ability to add GPS data to the video including location and speed data.
5) Ability to add a device to automatically bookmark video when certain G-forces are applied, and allowing monitoring driver's driving habits, such as hard braking, quick lane change, going around curves too fast, etc.
6) "Heart beat" monitor to show that the system is fully functional. This indicator light will be used during vehicle pre-trips multiple times a day to assure the system is working properly.
7) Ability to wirelessly download video clips without having to pull the hard drive from the DVR and make this secure watermarked data easily available to our Risk Department and Law enforcement agencies in a seamless manner all without the need of special licensed software.
8) Automatically download video clips associated with events that the driver determines or events that the system determines needs to be reviewed by a supervisor.
9) When reviewing the videos GPS data including location, time, direction of travel and speed will be displayed.
10) Non-proprietary information that can be read in any computer.

Operations rely on a camera system to ensure safety and security on the buses, and to investigate customer complaints and accidents. The video camera system has also been vital in investigations conducted by Asheville Police Department. The new system will improve safety and security providing accurate and timely data.

The total project cost is about $90,000 and will be funded with a Federal grant at 80% and a local match at 20%.

This action complies with the current City Council's Strategic Operating Plan in the fiscal responsibility focus area by operating the City of Asheville to the highest levels of fiscal responsibility.

The Transit Commission supports the subject project.

Pros:

- Standardization of the video camera system will improve transit daily operations.
- Standardization of the video camera system will improve reliability, safety and security, by providing accurate and timely data.
- Standardization of the video camera system can help with APD investigations.
- A Federal grant will provide 80% ($72,000) of the total project cost.

Con:

- A 20% local match in the amount of $18,000 is required.

The total project cost is about $90,000 and a Federal grant will provide 80% ($72,000) of the cost and the city will provide 20% ($18,000) of the cost. The project, including the local match, is already budgeted in the Transit Capital fund.

City staff recommends that City Council adopt a resolution authorizing staff to purchase an Apollo 4 Generation video camera system from Apollo Video Technology in order to update and standardize the existing transit fleet video camera system.

**RESOLUTION BOOK NO. 35 - PAGE 178**

**G. ORDINANCE NO. 4162 - BUDGET AMENDMENT FOR BICYCLE DESTINATION (WAYFINDING) SIGNS**

Summary: The consideration of a budget amendment in the amount of $1,050 to accept a privately-funded grant to be used for bicycle destination (wayfinding) signs.

The Bicycle and Pedestrian Task Force, interested community members, and City staff have completed plans to implement the first phase of a bicycle wayfinding project. The project includes 21 signs that will include destination, direction, and distance information. The chosen destinations include downtown, West Asheville, and UNC-Asheville. These destinations were chosen based on facilities, cyclist demand for the destinations, and the opportunity to highlight better route choices. Directing cyclists to Broadway rather than Merrimon Avenue to access UNC-Asheville from downtown Asheville is an example of a better route choice.

The Blue Ridge Bicycle Club has awarded the City a grant to help pay for the project.

City Council's Public Safety Committee reviewed the project at their meeting on January 28, 2013, and unanimously recommended the budget amendment be forwarded to the full City Council for review and approval.

This action complies with the City Council's Strategic Operating Plan in the Multimodal Transportation Area by continuing construction and maintenance of bicycle infrastructure and by leveraging funds for bicycle-friendly opportunities.

Pros:

- Encourages bicycling in general by improving the existing infrastructure.
- Encourages the use of available marked on-street bicycle facilities.
- Discourages the use of less desirable routes.
- Recommended as an action step in the approved Bicycle Master Plan (Action 1.8, page 71).
- Recommended as an additional measure to further promote bicycling by the League of American Bicyclists when designating Asheville as a Bronze Level Bicycle Friendly Community.
- Funded by private sources (great partnership opportunity).

Con:

- City is responsible for part of the installation cost and all of the maintenance cost.

The total estimated cost of the project is $1,800. The $1,050 grant will fully pay the material and fabrication cost of the signs and the City will pay for the installation cost, which is estimated to be about $750. The installation and ongoing maintenance costs are already budgeted in the Transportation Department's (Traffic Engineering Division) operating budget.

Staff recommends that City Council approve a budget amendment in the amount of $1,050 to accept a privately-funded grant to be used for bicycle destination (wayfinding) signs.

Ms. Claudia Nix said she was extremely happy for this grant to put in the bicycle wayfinding signs.

**ORDINANCE BOOK NO. 28 - PAGE 136**

**H. ORDINANCE NO. 4163 - BUDGET AMENDMENT FOR THE JOB ACCESS AND RESERVE COMMUTE AND NEW FREEDOM FEDERAL GRANTS**

Summary: The consideration of a budget ordinance amendment in the amount of $227,068 and $283,317 to set up the project budgets for the Job Access and Reverse Commute (JARC) and the New Freedom (NF) projects, respectively.

The City of Asheville is the designated recipient of the Job Access and Reverse Commute (JARC) and New Freedom grant funds, which are programs of the Federal Transit Administration (FTA). JARC is a formula grant program oriented to provide job access in the urbanized and suburbanized area. The formula is based on the number of eligible low-income and welfare recipients in these areas.

The projects to be funded include: the Black Mountain Trailblazer route, which is operated by Mountain Mobility (JARC grant), pedestrian improvements along US 64 in Henderson County, which is the City of Hendersonville's project (NF grant), van purchasing and rehabilitation and daily operations, which is for Customer Inspired Services (NF grant), and the City of Asheville's administrative costs for both programs.

The job access refers to projects relating to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment.

The reverse commute refers to a public transportation project designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities.

New Freedom is also a FTA formula grant program for new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990. These funds are intended to assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.

To be eligible, the programs require an intensive planning process and the development of a Coordinated Public Transportation and Human Services Transportation Plan or CTP-HSTP based on community participation. The CTP-HSTP was developed in conjunction with the French Broad Metropolitan Planning Organization, Buncombe, Henderson and Haywood Counties, human services agencies, public and private transportation providers, the North Carolina Department of Transportation and the general public to assess current transportation needs, identify gaps and to set goals. The plan was approved on March 29, 2012 by the French Broad River MPO's governing body (the Transportation Advisory Committee), which includes elected representatives from each of the eighteen local governments which make up the MPO. The CTP-HSTP set the rules to apply for projects and the projects were selected in a competitive process that was approved by the TAC.

In September 2012, Buncombe County's Mountain Mobility, the City of Hendersonville and Customer Inspired services were selected as sub-recipients of the JARC grant and NF grant. The projects are listed as follows:

| Sub-Recipient | Project | Program | Amount funded | Sub-Recipient's match |
|---|---|---|---|---|
| Buncombe County | Black Mountain Trailblazer | JARC | $102,181 | $102,181 |
| City of Asheville | Program Administration | JARC | $22,706 | N/A |
| City of Hendersonville | Pedestrian improvements along US 64 | NF | $197,116 | $37,000 |
| Customer Inspired Services | Van purchasing and rehab | NF | $18,700 | $2,300 |
| Customer Inspired Services | Operations | NF | $2,000 | $2,000 |
| City of Asheville | Program | NF | $24,201 | N/A |

| | | | | |
|---|---|---|---|---|
| | Administration | | | |

The city needs to set up project budgets in order to pass through the funds and will seek reimbursement directly from the FTA. The sub-recipients will be responsible for the match.

The City will be responsible for the Program Management and, as designated recipient, to oversee the use of the funds according to FTA regulations. The program management will require the use of city resources, mainly staff. As a designated recipient the city will use $22,706 and $24,201 of JARC and NF funds, respectively, for administration purposes, which will cover the program management expenses for a period of two years.

This action complies with the City Council Strategic Operating Plan by supporting the fiscal responsibility focus area, specifically operating the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- Project funding is provided by the FTA, 50% for operating projects and 80% of capital projects. The sub-recipients are responsible for the local match.
- The city can use $46,907 for administration purposes.

Con:

- None.

The total financial impact for the subject projects is $510,385 and it will be funded with Federal Funds and matched by the sub-recipients. $46,907 will be reimbursed to the city for administrative costs. There is no impact on the City's General Fund budget.

Staff recommends that City Council adopt a budget ordinance amendment in the amount of $227,068 from Federal Funds to setup the project budget for Job Access and Reverse Commute project, and $283,317 to setup the project budget for the New Freedom projects, including the administrative costs.

**ORDINANCE BOOK NO. 28 - PAGE 138**

**I. ORDINANCE NO. 4164 - BUDGET AMENDMENT FROM THE US DEPT. OF HOUSING & URBAN DEVELOPMENT TO ACCEPT EMERGENCY SOLUTIONS GRANT FUNDS**

Summary: The consideration of a budget amendment, in the amount of $451,256, from the US Dept. of Housing & Urban Development, to accept Emergency Solutions Grant funds.

In September, 2012, Council approved the execution of a grant agreement with the State of North Carolina for Emergency Solutions Grant funding. A contract and additional revised award has now been received. The following shows the final award totals:

| | Award Amount |
|---|---|
| **Organization** | |
| ABCCM (Steadfast House) | $ 35,557 |
| Helpmate | $ 15,000 |
| Homeward Bound | $ 90,360 |
| Salvation Army | $ 28,441 |
| City of Asheville, HMIS and Coordination | $ 50,000 |
| City of Asheville, Admin | $ 6,270 |

| TOTAL REQUESTS | $ 225,628 |
|---|---|

These funds must be matched 1:1 from other sources, resulting in a total contract amount of $451,256. Matching funds will come from the participating agencies, not the City of Asheville.

The proposed budget amendment will account for all funds awarded, plus the matching funds.

The project directly supports the City's Strategic Operating Goal of *Affordable*: The funded projects support the City's goal for all citizens to have access to safe, sufficient and affordable housing, by addressing homelessness with an emphasis on Housing First.

Pros:

- ESG funding is a key funding resource for emergency shelter, and is now becoming an important resource for rapid rehousing of persons experiencing homelessness.

Con:

- None

Program funding is entirely from the US Dept. of Housing and Urban Development, through the State of North Carolina. Existing community development division staff will administer the program. No general funds are requested to support this program. The City will receive funds for administration and coordination through the grant.

Staff recommends that Council approve the budget amendment, in the amount of $451,256, for the Emergency Solutions Grant.

**ORDINANCE BOOK NO. 28 - PAGE 141**

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Smith moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. WATER RESOURCES UPDATE

Project Manager Phil Kleisler updated City Council on the Water Resources process update from January 23 - February 12, 2013. He then provided Council with the information sharing between the City and MSD.

### B. LEGISLATIVE UPDATE

Deputy City Manager Jeff Richardson highlighted some of the information they received from the City/County Manager Winter Conference regarding tax reform; an annexation amendment introduced; motor vehicle tax collections threatened; operation of mopeds; and a new alliance formed as part of collaborative effort to promote economic growth/development in North Carolina cities and towns - alliance is made up of community leaders including former North Carolina Governors, former municipal leaders, etc. for serving as a voice for public policy issues effecting economic viability of cities and towns and the success of businesses and the qualify of life of residents.

## IV. PUBLIC HEARINGS:

A. **CONTINUATION OF CONSIDERATION TO CONDITIONALLY ZONE HARRIS TEETER PHASE 2, LOCATED ON 17 AND 23 ELOISE STREET AND 136, 176 AND 180 MERRIMON AVENUE, FROM HIGHWAY BUSINESS DISTRICT, COMMERCIAL BUSINESS I DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING IN ORDER TO FACILITATE ADDITIONAL OUTPARCEL DEVELOPMENT IN ADDITION TO THE HARRIS TEETER STORE, AND A MODIFICATION REQUEST TO THE LANDSCAPE BUFFER**

**ORDINANCE NO. 4165 - ORDINANCE TO CONDITIONALLY ZONE HARRIS TEETER PHASE 2, LOCATED ON 17 AND 23 ELOISE STREET AND 136, 176 AND 180 MERRIMON AVENUE, FROM HIGHWAY BUSINESS DISTRICT, COMMERCIAL BUSINESS I DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING IN ORDER TO FACILITATE ADDITIONAL OUTPARCEL DEVELOPMENT IN ADDITION TO THE HARRIS TEETER STORE, AND A MODIFICATION REQUEST TO THE LANDSCAPE BUFFER**

Mayor Bellamy said that the public hearing on this issue was held on January 22, 2013, and continued to this date in order for the City and developer to dialogue about options. City Council reserved the right to re-open the public hearing to receive new information only.

Assistant Planning & Development Director Shannon Tuch said that this is the continued consideration of a conditional zoning application for Harris Teeter Phase 2, located at 17 and 23 Eloise Street and 136, 176 and 180 Merrimon Avenue, from Highway Business District, Community Business I District and RS-8 Residential Single-Family High Density District to Highway Business District/Conditional Zoning in order to facilitate additional outparcel development in addition to the Harris Teeter Store, and a modification request to the landscape buffer.

On January 22, 2013, the Council received a report and conducted a public hearing on the conditional zoning of approximately 8.45 acres located along Merrimon Avenue, Eloise Street, Holland Street and E. Chestnut Street.

At the request of the property owners and developers, a vote of the Asheville City Council on the application was postponed until February 12, 2013. Since the public hearing, City staff has worked with neighbors of the proposed development and with the developers/owners to come up with additional conditions for the rezoning that address concerns of residents and property owners in the area. She then reviewed in detail the the following new conditions agreed upon (previous listing plus new conditions), noting that the conditions added since the public hearing are listed below the dotted line.

- The conditions included in the Technical Review committee report and the standard conditions.
- That there are no more than four building pads in addition to the Harris Teeter (five total).
- Buildings other than Harris Teeter shall be no more than 32 feet in height.
- Buildings fronting on Merrimon shall be oriented to the street and placed as close to the street as is reasonably possible to maximize safe pedestrian interaction.
- The architectural design and building materials used for the buildings will be similar to those being utilized in the Harris Teeter construction.
- The developer is allowed no more than one drive thru operation.
- No more than a total (all building pads excluding Harris Teeter) of 25,000 square feet of building will be constructed on the building pads.

- As the uses are submitted for final review, if the traffic counts exceed those indicated in the originally submitted traffic study, a new traffic impact analysis would need to be conducted and approved including the traffic impact from the Trader Joe's development.
- There be sidewalk connectivity from Merrimon Avenue to all buildings as appropriate for pedestrian safety and convenience.
- The uses permitted on the site shall be limited to those HB uses listed on the chart provided to City Council.
- No dumpster will be located within 100 feet of residential properties.

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- If a drive thru facility is located on the site it shall be located to the south of the signalized access point and fronting on Merrimon Avenue.
- Any window at a drive thru facility shall have hours of operation limited to between 6 AM and 12 Midnight.
- That $10,000 per building (not including Harris Teeter) will be provided to the City as the building permits are applied for. This money shall be used exclusively for pedestrian and traffic safety infrastructure in the vicinity of this project and tie in with existing road and pedestrian infrastructure. The first priority for these funds will be the construction of pedestrian improvements at the intersection of E. Chestnut, Holland, Maxwell, and Monroe, which she then used a drawing to describe.
- A sign will be erected on the subject property at the exit onto East Chestnut Street that reads "No Right Turn for Delivery Trucks" (headed west).
- Signage shall be limited to the submitted plans.
- That there will be an anti-idling policy for delivery vehicles in the lease/sale documents for the building pads. Signage indicating "No-Idling" will be placed in all loading areas.

One of the agreed upon conditions provides that the developer will provide funding for pedestrian safety infrastructure in the vicinity of the project. Specifically targeted is the intersection of E. Chestnut, Holland, Monroe and Maxwell Streets. The pedestrian improvements at this intersection are needed to complement the new sidewalk that will be constructed along the property frontage. These improvements will better define the actual path that should be used by pedestrians and will clearly show drivers where to expect pedestrians. Once the development is completed and opened for business, pedestrian activity in the immediate area is expected to increase including crossing activity along East Chestnut Street. At this time, it is anticipated that the improvements would have a maximum total cost of $30,000.

At 5:45 p.m., Mayor Bellamy opened the public hearing and restricted any public comments on the new conditions only.

Mr. Alan Ditmore felt the height condition is contrary to smart growth principles. He also did not support drive throughs because they discriminate to pedestrians.

A resident on Mt. Clare Avenue, representing the Five Point neighborhood, asked for the following five development mitigation plans that still need to be addressed: (1) establish a calm residential zoning (need speed limits lowered to 20 mph, pedestrian warning signs and no through traffic signs were applicable); (2) facilitate a calm residential zone (need commitment for funding for traffic calming); (3) intersection improvements at E. Chestnut/Monroe/Maxwell (need additional pedestrian improvements such as curb bump-out with pedestrian refuge, raised crosswalk and "stop for pedestrians in crosswalk" signage at both E. Chestnut and Maxwell crosswalks. These improvements will help driver and pedestrian visibility and safety and are in addition to those already proposed by City staff; (4) truck traffic restriction (needs to be included in any lease/sales agreements - in addition to sign requirement); and (5) emission/odor controls (need for fast food and/or other restaurants).

Mr. David Metz, resident on E. Chestnut Street, cited that there is already too much existing traffic on Chestnut Street, the need for emission/odor control, and traffic calming measures for the Five Points neighborhood.

Mr. Mario Hernandez, resident on Fulton Street, was uncomfortable with the zoning of Highway Business on the property.

Ms. Heather Rayburn, representing the Five Points Neighborhood, said that after analysis, the neighborhood decided to support the rezoning request in exchange for having them consider the five development mitigation plans outlined above, noting they were still disappointed that the developer is still considering a drive through. She hoped that the City would agree to the intersection improvements to W. Chestnut and Maxwell/Monroe by installing a curb bump-out, in addition to other traffic calming measures. She said the neighborhood is in the process of filling out the traffic calming petition and hoped to be placed at the top of the traffic calming list. They were counting on Council to fund the traffic calming needs for their neighborhood. Their main objective is for a healthy, walkable, safe, mixed-use neighborhood.

Mr. Greg McCoy, resident on Monroe Place, noted that the property was zoned improperly from the beginning. He hoped Council will fund the needed traffic calming measures for their neighborhood. He also asked for no through truck traffic signs.

Mr. Jesse James, resident on Spears Avenue, felt that they didn't need any more Highway Business zoning and did not support drive through development.

At 6:16 p.m., Mayor Bellamy closed the public hearing.

Director of Transportation Ken Putnam responded to Councilman Pelly about speed limits, no truth truck traffic signs, and if the signs are not working at the intersection of W. Chestnut and Maxwell/Monroe that they would look for other solutions, such as the curb bump-out.

Councilman Pelly noted that traffic will have a significant impact on the neighborhood and we will need to work with them due to the cumulative traffic from the new development coming in the area. If improvements are needed from the traffic calming study, then Council needs to be prepared to provide the funding for those improvements.

Councilman Pelly found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4165 to conditionally zone Harris Teeter Phase 2, located at 17 and 23 Eloise Street and 136, 176 and 180 Merrimon Avenue, from Highway Business District, Community Business I District and RS-8 Residential Single-Family High Density District to Highway Business District/Conditional Zoning in order to facilitate additional outparcel development in addition to the Harris Teeter Store, and approval of the modification request to the landscape buffer, subject to the following conditions: (1) The conditions included in the Technical Review committee report and the standard conditions; (2) That there are no more than four building pads in addition to the Harris Teeter (five total); (3) Buildings other than Harris Teeter shall be no more than 32 feet in height; (4) Buildings fronting on Merrimon shall be oriented to the street and placed as close to the street as is reasonably possible to maximize safe pedestrian interaction; (5) The architectural design and building materials used for the buildings will be similar to those being utilized in the Harris Teeter construction; (6) The developer is allowed no more than one drive thru operation; (7) No more than a total (all building pads excluding Harris Teeter) of 25,000 square feet of building will be constructed on the building pads; (8) As the uses are submitted for final review, if the traffic counts exceed those indicated in the originally submitted traffic study, a new traffic impact analysis would need to be conducted and approved including the traffic impact from the Trader Joe's development; (9) There be sidewalk connectivity from Merrimon Avenue to all buildings as

appropriate for pedestrian safety and convenience; (10) The uses permitted on the site shall be limited to those HB uses listed on the chart provided to City Council; (11) No dumpster will be located within 100 feet of residential properties; (12) If a drive thru facility is located on the site it shall be located to the south of the signalized access point and fronting on Merrimon Avenue; (13) Any window at a drive thru facility shall have hours of operation limited to between 6 AM and 12 Midnight; (14) That $10,000 per building (not including Harris Teeter) will be provided to the City as the building permits are applied for. This money shall be used exclusively for pedestrian and traffic safety infrastructure in the vicinity of this project and tie in with existing road and pedestrian infrastructure. The first priority for these funds will be the construction of pedestrian improvements at the intersection of E. Chestnut, Holland, Maxwell, and Monroe, which she then used a drawing to describe; (15) A sign will be erected on the subject property at the exit onto East Chestnut Street that reads "No Right Turn for Delivery Trucks" (headed west); (16) Signage shall be limited to the submitted plans; and (7) That there will be an anti-idling policy for delivery vehicles in the lease/sale documents for the building pads. Signage indicating "No-Idling" will be placed in all loading areas. This motion was seconded by Vice-Mayor Manheimer.

Councilman Bothwell said that one of the principle owners of the property said that they contracted with Chick Fil A a long time ago because that was permitted under the zoning.

When Councilman Bothwell asked Mr. Putnam if the neighborhood has been looked at for one-way streets, Mr. Putnam said that they are open to put that discussion on the table for consideration.

Councilman Hunt appreciated the work between the developer and the neighborhood on the new conditions added. He agreed that the Highway Business zoning is a mistake, but the conditions layered on that zoning makes the property more restrictive than a commercial business zone.

In response to Councilman Hunt about the food odor concern, Mr. Steve Vermillion, developer, said that they have been talking with a local engineering firm who did some work on the building. That engineer felt that the type of filtering system at this location, given the distance from the residences, would not be effective. He wanted to make sure that if they spend the additional money for the filtering system that it will be effective.

The motion made by Councilman Pelly and seconded by Vice-Mayor Manheimer carried unanimously.

Councilman Pelly moved to direct the City Manager to cause a review of the traffic impact in the immediate area of the development and to bring to City Council recommendations emerging from that review. This motion was seconded by Councilman Bothwell.

There was brief discussion about whether Councilman Pelly's motion was to include the City funding more than the $30,000 for traffic calming already agreed to by the developer. Councilman Pelly felt that the $30,000 will be for the intersection improvements but the neighborhood will be impacted far beyond just the intersection from that development. Mayor Bellamy felt that traffic calming needs to be looked at as part of the budget process. It was determined that City staff is currently collecting traffic data on the roads (since the neighborhood has already brought the concerns to their attention). Mr. Putnam said that the concern is that when Harris Teeter and Trader Joe's are open for business there may be a further impact to the neighborhood. They really won't know that until they get to that point in time. He suggested that staff continue their dialogue with the community making sure that the City has all their concerns on the table. City staff will also continue with the collection of the data so that it becomes a baseline that they will be able to compare the impacts to and see what impact the new businesses have on the neighborhood streets. Councilman Pelly felt it was important for the community to continue with the petition process (which forces conversation within the community) and because the traffic study analysis is already in motion, he withdrew his motion.

Mayor Bellamy asked City Clerk Burleson to add a placeholder for an agenda to discuss the traffic calming measures in this neighborhood. Said placeholder will be after the Harris Teeter and the Trader Joe's developments are built and have been open for a few months.

City Manager Jackson will provide to Council a list of the traffic studies that have been done, their findings, and where we have found that their action plans would be appropriate. There is a list and there are neighborhoods that already qualify. We present that information to Council in the next 8 weeks during the budget process and Council can consider at that point in time what would be something to add to the capital improvement budget, reallocated from some other infrastructure improvement. Then the community would know that as risks are identified and they have gone through the process. They will be ranked in order of highest risk and they would know that they would be in line for funding. There will also be an opportunity for Council to talk about policies about where more affluent communities are in a position to contribute to those improvements because Council still would want to address the public safety needs regardless of the affluence of a neighborhood and their ability to share in the cost. We propose that the work of the staff continue in this neighborhood and other neighborhoods where people are concerned about their safety, and provide the kind of objective analysis as to what needs to be done. We will empower Council with that information and Council can consider the funding of what would put us on a track to reliably address this so that we show good faith with neighborhoods.

Councilman Smith noted that Council is in the process of reexamining the zoning designations to make sure they are in harmony with existing neighborhoods. We need to learn more about balancing density along side of safety concerns.

**ORDINANCE BOOK NO. 28 - PAGE 143**

**B. PUBLIC HEARING TO CONSIDER AMENDING THE 2012-13 CONSOLIDATED ACTION PLAN**

**RESOLUTION NO. 13-28 - RESOLUTION AUTHORIZING SUBSTANTIAL AMENDMENT #2 OF THE CITY'S CONSOLIDATED ANNUAL ACTION PLAN FOR 2012-2013**

Director of Community Development Jeff Staudinger said that this is the consideration of a resolution amending the 2012-2013 Consolidated Annual CDBG and HOME Action Plan to cancel HOME funding for OnTrack for the HomeBase program; and to allocate those funds to Homeward Bound for Tenant Based Rental Assistance. This public hearing was advertised on February 1 and 8, 2013.

OnTrack has discontinued its Home Base program, for which 2012-2013 CDBG and HOME funds had been allocated. CDBG funding cancellation was approved by Council in September of 2012.

HOME funding recommendations are made by the Asheville Regional Housing Consortium. The Consortium reviewed OnTrack's request for the cancellation of its HOME grant of $20,000, as well as the return of $2,767 of unused funds from 2011-2012, at its November, 2012 meeting. The Consortium also reviewed Homeward Bound's request for those funds to continue Tenant Based Rental Assistance for households who are currently homeless or in immediate danger of homelessness. Homeward Bound would use the additional $22,767 exclusively for rapid re-housing, allowing the agency to house an additional 15 households by the end of the current fiscal year.

This action meets the Council Strategic Goals of Affordable by supporting initiatives to end homelessness in Asheville emphasizing the Housing First philosophy.

Pro:

- The proposed action will enable the City to allocate HOME funds for program that has proven effective in rapidly house households currently experiencing homelessness.

Con:

- None.

The proposed use of funds would grant federal funds already allocated to the City. No City general funds are affected.

The Asheville Regional Housing Consortium recommends that the 2012-2013 Action Plan be amended to allocate the $22,767 of HOME funds originally allocated to OnTrack's HomeBase program to Homeward Bound, for use as Tenant Based Rental Assistance to rapidly re-house homeless households. This includes $20,000 of FY 2012-2013 funds, and $2,767 of 2011-2012 funds.

Mayor Bellamy opened the public hearing at 6:45 p.m.

Mr. Alan Ditmore felt that his decision not to be a parent has placed him at a greater risk of being homeless. He felt that parents are being priority over childless homeless people.

Brother Christopher Chiaronmonte said that he would be willing to give up his housing in exchange for a place to pitch his tent.

Mayor Bellamy closed the public hearing at 6:50 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 13-28. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 179**

**C. PUBLIC HEARING TO CONSIDER REZONING 1.35 ACRES ON POSSUM TROT FROM COMMERCIAL INDUSTRIAL DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT**

**ORDINANCE NO. 4166 - ORDINANCE TO REZONE 1.35 ACRES ON POSSUM TROT FROM COMMERCIAL INDUSTRIAL DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT**

Urban Planner Blake Esselstyn said that this is the consideration of rezoning 1.35 acres on Possum Trot from Commercial Industrial District to RM-8 Residential Multi-Family Medium Density District. This public hearing was advertised on February 1 and 8, 2013.

Mr. Esselstyn said that this parcel sits at the intersection of three zoning districts (CI, CBII, and RM8) without significant geographic features to separate them, and a case could be made that any of the three districts would suit the property. The current zoning designation (Commercial Industrial) maintains the mixed-use zoning at a consistent depth from Brevard Road (to the west).

The applicants, however, also own the adjacent parcel to the east, a residential parcel which neighbors other residential parcels also accessed by the private drive known as Possum Trot. The rezoning request would make the subject property's zoning consistent with these

properties. The applicants' intent is to preserve the subject lot as a wooded buffer in the near term, with the possibility of residential development in the future; they also specifically wanted to prevent further commercial development near these homes.

With a right-of-way only 16 feet wide and a gravel surface, albeit in excellent condition, Possum Trot would not meet the standards for commercial development on a landlocked parcel such as this. The right-of-way could not accommodate two lanes for ingress and egress of commercial traffic, and the topography would make it difficult for creation of a shared access with the parking lot entrance to the south. This limitation further supports the suitability of a residential zoning assignment.

At their January 2, 2013, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning request.

As of this writing, staff has received no communications from neighbors or other citizens regarding this item.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Proposed zoning is appropriate for the location.
- Sub-standard access road would be problematic for commercial development.

Con:

- None noted.

Staff feels only one possible scenario, the recombination of this property with the lot to the west, would create an arrangement that could support commercial development, and even that would present challenges. The proposed residential zoning is fitting for the infrastructure conditions, as well as for the other geographic context, and staff recommends approval.

Mayor Bellamy opened the public hearing at 6:53 p.m.

Mr. Steven Garrett, property owner, stated that he only wanted his property rezoned for a buffer between his home and the highway.

Mayor Bellamy closed the public hearing at 6:54 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Manheimer found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4166. This motion was seconded by Councilman Pelly and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 151**

**V. UNFINISHED BUSINESS:**

**A. SECOND AND FINAL READING OF ORDINANCE NO. 4159 - ORDINANCE APPROVING A SIGNAGE PLAN FOR UNC-ASHEVILLE**

Mayor Bellamy said that the public hearing and adoption of Ordinance No. 4159 was on January 8, 2013. City Attorney Oast said that because the ordinance failed to receive the 2/3

vote necessary to pass on the first reading, it was necessary to bring it back Council for adoption on the second reading.

Councilman Davis moved to adopt Ordinance No. 4159 on its second and final reading as follows: Approval of the UNC-A sign package as follows: (1) Gateway signs be limited to the following locations: (a) WT Weaver Blvd. & University Heights (round-about); (b) University Heights & Campus Drive (triangle intersection); (c) Broadway Ave. & Campus Dr; (d) Merrimon Ave. & WT Weaver Blvd.; and (e) Broadway Ave. & WT Weaver Blvd.; (2) All signs located within road rights-of-way shall obtain all necessary approvals or encroachments from the regulating agencies; (3) Any changes to the signage included in this plan may require a new review by City Council; and (4) All signs shall comply with the proposed standards and no exceptions or variances are permitted (minor changes to sign location due to visibility or other site constraints may be permitted). This motion was seconded by Councilman Vice-Mayor Manheimer and carried on a 5-2 vote, with Councilman Bothwell and Councilman Pelly voting "no."

**B. ORDINANCE NO. 4127 - ORDINANCE AMENDING THE BILTMORE PARK TOWN CENTER SIGNAGE PLAN FOR OFFICE TENANT AND RETAIL TENANT IDENTIFICATION SIGNAGE**

Assistant Planning & Development Director Shannon Tuch said that in July 2007, City Council approved a signage plan for the Biltmore Park Town Square (BPTS) urban village project. Comprehensive signage plans are allowed by ordinance to enable larger development sites to develop a custom plan for signage that addresses unique needs and contexts in a comprehensive and harmonious manner.

On October 9, 2012, City Council approved the office tenant signs. A second amendment was initially proposed in October affecting retail and office tenants, but the developer was urged by the Council to consider alternatives. The revised proposal is before the Council today.

The applicant has revised their request to remove the tenant identification sign on the back of the movie theater where options for a painted mural are being considered. Murals that do not depict trademarked logos, products for sale, or services offered are not typically considered signage and would not normally be included in a signage plan request.

The applicant continues to request the tenant identification signage on the back of the parking of deck facing Interstate 26. The additional sign panel would be approximately 37'x26' or 962 square feet and would match the existing sign's vertical dimension and the text would be similar in design and character to the existing sign.

Analysis update: The use of a mural on the back of the theater in lieu of tenant identification would still serve to creatively draw attention to the site without providing advertising for any one retailer, thereby addressing the concern over excessive and off-site advertising at this location. The staff provisionally supports this request although the design has not yet been submitted.

The proposed tenant identification signage on the back of the parking deck remains unchanged although the rendering has been updated which shows a more balanced and harmonious relationship to the existing sign. The applicant has also supplied a photoshopped image of the existing and proposed sign as it would be seen from the interstate for better visualizing.

As an alternative, the applicant also explored a free-standing pylon sign with a height of 38' and overall size of 276 square feet but was not satisfied with its appearance or effectiveness.

Cons:

- The cumulative size of the existing sign when added to the proposed sign is approximately 2262 square feet, over six times the size of an average billboard.
- Approval of this much cumulative signage is likely to set a precedent that will be of interest to other large multi-tenant developments

City staff recommends City Council consider all information and approve the proposed signage plan amendment if it can be determined that the goals of the signage plan and/or other city adopted goals are satisfied.

At 6:59 p.m., Mayor Bellamy opened the public hearing.

Ms. Sarah Davis, representing Biltmore Farms, explained the purpose of an urban village, which is to create mixed use development that is economically vital, pedestrian oriented and also contributes to the placemaking character of the built environment. Biltmore Farms knows how important high density urban villages are to the smart growth of our city. She asked Council to consider allowing the expansion to our signage to address the inadequate retail signage. She reviewed with Council several slides of options they considered, but for several reasons they were not happy with them. The additional signage would be used to leverage additional retailers and drive more jobs to Asheville and Biltmore Park Town Square.

Ms. Patsy Brison, attorney representing a group of merchants in Biltmore Village area, said that they are strongly opposed to this proposal. She raised a procedural objection of whether Council can review the proposal; the proposal does not comply with the purposes set forth in Section 7-13-10 (1); this proposal is over seven times the size of an average billboard; and it is a prohibited off-premise sign; proposal is contrary to the Urban Village District description; terrible precedent; proposal is not in keeping with the Urban Village concept; and unfair competitive advantage to merchants in the Biltmore Village area and to merchants in the downtown area.

Ms. Kathy McCarten, resident in Biltmore Park, spoke against the proposal for several reasons. She said that variances are to be granted for extreme circumstances out of the control of the developer and this is not the case. The sign is seven times the size of a billboard and the signage is aesthetically unpleasing. She felt that the large sign will be an eyesore every day to the residents of Biltmore Park. Granting this proposal will make the area resemble a shopping center.

Brother Christopher Chiaronmonte spoke against the proposal.

Mr. Paul Szurek, Secretary to the Biltmore Park Town Square Condominium Association, provided Council with information regarding apartment, hotel and office occupancy rates for Biltmore Park compared to others in the area, showing that everything looks good in Biltmore Park, so the signs are not a negative. They not only have to think about the residents in the area, but also the people who have invested in their retail businesses, along with their employees in the stores. The visibility and the effectiveness of the concept has tremendous potential to achieve smart growth for Asheville and Biltmore Park. They looked at other signs and received a lot of feedback from the community. He said that the signage is bigger than a billboard, but it's also set off from the highway about 8 times of a standard billboard. He hoped Council would approve the signage package so the development can move forward in Biltmore Park and other areas of the City.

At 7:14 p.m., Mayor Bellamy closed the public hearing.

In response to Councilman Hunt regarding Ms. Brison's procedural question, City Attorney Oast advised Council that they can approve signs in urban village projects.

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Councilman Hunt is not a fan of increased commercial signs in the community; however, the development is a smart growth development and has high density, mixed-used and is environmentally responsible. There is a 30% vacancy rate in retail and he felt it's in the community's interest to see developments like this succeed so that there can be more in the future.

Councilman Bothwell said his decision hinges on setting a precedent and the City has adopted a sign ordinance to generally tone down the signage. He could not support the proposal.

In response to Councilman Pelly, Mr. Szurek said that they don't use the interstate signs because they are limited to only lodging, gasoline and food businesses. He said they looked at the Staples sign on Merrimon Avenue under advisement and they had the black screen behind the letters with the letters more of a subdued red.

Councilman Smith said that the City has a special relationship with Biltmore Park as seen by their voluntary annexation into the City when phases were complete. He didn't see this as precedent setting.

Councilman Hunt moved for the adoption of Ordinance No. 4127, to approve (1) the office tenant signs; and (2) the tenant identification signs & panel, as proposed for Biltmore Park Town Center, and find that the request is reasonable and consistent with the economic development goal to, "Create more collaborative and effective working partnerships between the City of Asheville, the business community, and other key organizations to effectively manage the City's regulatory environment while accomplishing economic development goals". This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Councilman Bothwell and Councilman Pelly voting "no".

**ORDINANCE BOOK NO. 27 - PAGE 475**

**C. CONFIRMATION OF ESSAY QUESTIONS TO ELIGIBLE ASHEVILLE CITY BOARD OF EDUCATION CANDIDATES**

Vice-Mayor Manheimer said that the pursuant to the schedule which was adopted by City Council, the Boards & Commissions Committee reviewed all questions submitted by City Council and with Councilman Smith's help, narrowed them down to five final questions to ask the City Board of Education candidates to respond to in writing. At the request of Mayor Bellamy, and through consensus of Council, the five questions included one question raised by Mayor Bellamy.

It was the consensus of Council to wait until the deadline of February 25 before the essay questions are sent to all eligible candidates.

Mayor Bellamy announced that the deadline for Asheville City Board of Education applications is Monday, February 25, 2013, at 5:00 p.m. and to please contact City Clerk Burleson for an application form.

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 13-29 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CHERRY BEKAERT & HOLLAND FOR AUDITING SERVICES FOR FISCAL YEAR 2012-13**

Executive Director for Finance & Strategic Planning Lauren Bradley said that this is the consideration of a resolution authorizing the Mayor to execute a contract with Cherry Bekaert & Holland (hereinafter referred to as Cherry Bekaert) for auditing services for fiscal year 2012 - 2013.

North Carolina General Statute 159-34 requires that local governments have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission. In response to the aforementioned general statute, staff recommends retaining the services of Cherry Bekaert to conduct the audit of the city's accounts for the fiscal year ending June 30, 2013.

The City issued a Request for Proposal (RFP) for Auditing Services mid-November. Five bid submissions were received through December 17, 2012, and were subsequently reviewed by a select committee of staff members of the Finance and Management Services department. All proposals were scored and weighted on the same set of qualifying criteria as outlined in the RFP. Upon completion of the qualitative scoring each firm's cost was factored in and weighted to yield an overall score. The firm with the highest score is Cherry Bekaert.

Cherry Bekaert has extensive experience auditing North Carolina local governments of the size and complexity comparable to the City of Asheville's financial systems, accounts and records. This breadth and depth of experience will provide to City staff new perspectives and to City Council the assurances that an objective audit process demands.

The proposed fee for fiscal year 2012-2013 audit and financial statement preparation is $85,000. Fees for those services for fiscal years 2010, 2011, and 2012, were $153,500, 109,000, and 95,000, respectively.

As part of the engagement, Cherry Bekaert will provide a document required by the Auditing Standards Board that provides a framework for the auditor's communication with the Mayor and City Council and identifies some specific matters to be communicated. Pursuant to the Auditing Standards Board requirement, Cherry Bekaert will communicate timely and directly with the Mayor and City Council on matters related to the financial statement audit that are, in the auditor's professional judgment, significant and relevant to the responsibilities of those charged with governance in overseeing the financial reporting process.

Additionally, Cherry Bekaert will provide an audit schedule with milestones and timetables in an effort to improve audit planning and ensure that the audit report is delivered timely to the Local Government Commission.

Execution of this contract complies with City Council's Strategic Operating Plan of operating the City of Asheville's organization to the highest fiscal responsibility, as well as the Audit Policy portion of City Council's Financial Policies.

Award of the contract was considered and unanimously approved by the City Council Finance Committee in January 2013.

Pro:

- Contracting with Cherry Bekaert aligns with City Council's financial policy, and will help ensure the timely and successful completion of the annual audit.

Con:

- None noted.

A fee of $85,000 has been proposed for the audit and is included in the Finance Department's portion of the Fiscal Year 2012-2013 annual operating budget.

City staff recommends adoption of the resolution authorizing the Mayor to execute a contract with Cherry Bekaert & Holland in the amount of $85,000 for auditing services for fiscal year 2012-2013. This fee is $10,000 less than the audit fee incurred by the City of Asheville for Fiscal Year 2012.

Mr. Eddie Burke, Partner with Cherry Bekaert & Holland briefly reviewed his firm's profile, mid-carolina profile, client service team, government services group, and audit experience with government entities. He looked forward to have the opportunity to serve the City of Asheville.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hunt moved for the adoption of Resolution No. 13-29. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 180**

**B. BOARDS & COMMISSIONS**

Regarding the Citizens-Police Advisory Committee, the following individuals have applied for the vacancy: Karl Katterjohn and Fred Cooke. Because the vacancy is for a south representative and no one from the south applied, it was the consensus of Council to re-advertise for a south representative.

Regarding the Asheville-Buncombe Community Relations Council, the following individuals have applied for the vacancy: Melissa Blazen, George Pfeiffer, Christine Longoria, Jesse Andrews, Sandra Houts and Tracy Miles. It was the consensus of Council to postpone making the appointment for one month, at the request of the Community Relations Council

Regarding the Airport Authority, Vice-Mayor Manheimer said that even though City Council would enjoy having the Mayor's representation on the Airport Authority, because of the legislation that bars elected officials from serving on the new Airport Authority Board, she was concerned about having an empty seat. Currently David Hillier and Bob Roberts are also the City appointed representatives. The Boards & Commissions Committee met and felt that it might be prudent to move forward to appointing someone to the Mayor's seat (since the new Airport Authority refuses to acknowledge her appointment). Mayor Bellamy did not have any problem with appointing someone to serve in her seat; however, she could not support Mr. Hillier continuing to serve as he does not represent Council's views nor has he represented the views of our stakeholders. It was the consensus of Council to advertise for a seat on the new Airport Authority and give City Attorney Oast the opportunity to update the full Council on the appointment process at his earliest opportunity. In addition, upon inquiry of Councilman Bothwell about the FAA funding for major capital improvements, City Attorney Oast said that he will also provide Council with a report on that issue at his earliest opportunity.

**RESOLUTION NO. 13-30 - RESOLUTION APPOINTING A MEMBER TO THE TREE COMMISSION**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Tree Commission.

The terms of Laura Yavelow and Bill Hascher expired on December 31, 2012.

The following individuals have applied for the vacancy: Matthew Eric Schlosser, Zoe Schumaker, Andy White, Mike Dale and Jonathan Gach.

It was the consensus of the Boards & Commissions Committee to appoint Matthew Schlosser and Jonathan Gach.

Councilman Bothwell moved to appoint Matthew Schlosser and Jonathan Gach, as members of the Tree Commission, to each serve a three-year term respectively, terms to expire December 31, 2015, or until their successors have been appointed.

**RESOLUTION BOOK NO. 35 – PAGE 181**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Brother Christopher Chiaronmonte spoke about selective police enforcement in the downtown area.

When Mr. Alan Ditmore spoke in support of funding Planned Parenthood, Mayor Bellamy responded that Mr. Ditmore may be confusing the City with Buncombe County as the County just talked about funding non-profits.

Mayor Bellamy announced that President Obama will be visiting Asheville on February 13 to talk about economic development opportunities.

**Closed Session**

At 7:53 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or initial employment of an individual prospective public officer or employee. The statutory authorization is contained in G.S. 143-318.11 (a) (3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11 (a) (6); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 8:15 p.m., Councilman Hunt moved to come out of closed session. This motion was seconded by Councilman Pelly and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 8:15 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – February 26, 2013- 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Bothwell gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF THE ASHEVILLE HIGH SCHOOL/SILSA MARCHING BAND**

Mayor Bellamy was pleased to recognize the Asheville High School/SILSA Marching Band and their Directors for its extraordinary year, for representing North Carolina at President Obama's Inauguration, and for being named "Grand Champion" of the Inaugural Festival. Mayor Bellamy asked that each member of the Band that was able to attend to identify themselves.

**II. CONSENT AGENDA:**

At the request of Councilman Hunt Consent Agenda Item "E" was removed from the Consent Agenda for discussion and/or an individual vote.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 12, 2013**

**B. RESOLUTION NO. 13 -31 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A TRANSFER OF REAL PROPERTY FROM BUNCOMBE COUNTY FOR THE PURPOSE OF IMPLEMENTING THE CRAVEN STREET IMPROVEMENT PROJECT**

Summary: The consideration of a resolution authorizing the Mayor to accept a transfer of real property, identified as PIN 9638-78-9646-00000, from Buncombe County for the purpose of implementing the Craven Street Improvement Project.

Buncombe County owns approximately 3.33 acres at the intersection of Emma Road and Craven Street, located within the floodplain of the French Broad River and across from the planned New Belgium Brewery site. Key elements of the Craven Street Improvement Project are planned for this property, including the realignment of the Craven Street / Emma Road intersection, the development of a low impact parking lot, and the installation of the greenway trailhead at the property. At this time, the County has agreed to grant the City ownership of the property to facilitate the installation of these improvements.

Prior to County ownership, the property was owned by the Board of Education of Buncombe County and operated as a maintenance facility. The property was improved with a one story concrete block building, asphalt parking lot and vehicle fueling station. The NC Department of Environment and Natural Resources has documented the removal of 6 underground fuel storage tanks from 1989 to 2008. Buncombe County gained title to the property in 2008 and removed the existing building(s) and asphalt with funding from the Hazard Mitigation Grant Program. The Hazard Mitigation Grant Program also imposed deed restrictions on the property in order to protect the floodplain values; specifically - strict limitations on new structures and permitted uses of the property are limited to open space, permeable parking lots, parks for outdoor recreation and wetland management.

These restrictions will carry with the conveyance of the property, and the City and County are working with the FEMA-State Hazard Mitigation Grant office to ensure that all proposed improvements are consistent with these deed restrictions. Further, upon acceptance of the property the City will be responsible for ensuring that the long term uses of the property are consistent with these deed restrictions. The City participated in the same grant program for the acquisition of several parcels along Swannanoa River Road in 2008, and there should be no issues with compliance.

This action meets Council goals by enhancing the City's long-term financial commitment to infrastructure maintenance and capital improvements. Additionally, this project leverages internal and external partnerships for pursuing capital improvements and infrastructure projects.

Pros:

- Provides for multi-model transportation and parking improvements on Craven Street
- Donation of land from Buncombe County

Cons:

- City will be responsible for ongoing maintenance and compliance associated with deed restrictions

City will be responsible for all due diligence associated with the transfer, including title research, environmental Phase One and Phase Two if necessary. Given the number of underground storage tanks that were once present on site, the City estimates approximately $15,000 will be budgeted for potential environmental remediation. These costs will be absorbed within the existing project budget for the Craven Street Improvements Project.

City staff recommends that City Council adopt the resolution authorizing the Mayor to accept a transfer of real property from Buncombe County for the purpose of implementing the Craven Street Improvement Project.

**RESOLUTION BOOK NO. 35 - PAGE 182**

**C. RESOLUTION NO. 13-32 - RESOLUTION DIRECTING THE CITY MANAGER AND CITY ATTORNEY TO REVIEW THE PACK PLACE LEASE ARRANGEMENT**

Summary: The consideration of a resolution directing the City Attorney and City Manager to review the Pack Place lease.

The Pack Place Education, Arts & Science Center (herein "Pack Place") was constructed in the late 1980's on property owned by the City. Its purpose is to function as an education, arts and science center. Pack Place Education, Arts & Science Center, Inc. (herein "Pack Place Board"), is the non-profit board that leases the real property from the City, and manages the

facility. Pack Place is the home of the Asheville Art Museum, Diana Wortham Theatre, the Colburn Earth Science Museum, and until recently, The Health Adventure. YMI is organizationally part of Pack Place, and is a member of the Pack Place Board, but is not located in the main Pack Place building.

The Health Adventure relocated in 2011, and vacated a substantial portion of Pack Place. The Asheville Art Museum has expanded into that space, and has plans for further extensive renovations. In connection with those plans, the Asheville Art Museum has requested the City consider a "direct lease" arrangement whereby the Museum would lease its part of Pack Place directly from the City. Diana Wortham Theatre is also planning some renovations. All of these developments are likely to result in the reconfiguration of internal spaces, such that amendment to the City's lease with Pack Place may be advisable. That lease expires in 2014.

In view of the above-described developments and the impending expiration/renewal of the current lease, the City should consider reviewing the current lease arrangement with the Pack Place Board, and the "major tenants" in Pack Place to ensure that Pack Place continues to fulfill its public mission, and that the needs of the organizations that are located there or associated with it are met. With this in mind, a resolution directing the City Manager and City Attorney to review the current arrangement is suggested, with a report back to Council in 60 days.

Adoption of the resolution is recommended.

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**D. RESOLUTION NO. 13-33 - RESOLUTION AUTHORIZING EXECUTION OF EASEMENT TO PROGRESS ENERGY CAROLINAS INC. FOR ELECTRIC POWER SERVICE TO AIRPORT FIRE/RESCUE FACILITY**

Summary: The consideration of a resolution authorizing the Mayor to execute an easement to Progress Energy for an electrical power service line for an aircraft rescue and firefighting facility at the Asheville Regional Airport.

A new firefighting and rescue facility is being constructed at the Asheville Regional Airport. The primary function of this new facility will be to respond to emergencies on the "air side" at the airport, including emergencies involving aircraft. Electrical power service is required, and Progress Energy has requested an easement to allow for the installation. This will be a new power service, and it will be installed underground. The City's Public Safety and Information Technology Departments have reviewed this request, and support it. The Airport Authority approved the easement as lessee on February 19.

Pros:

- Facilitates power service to new public safety facility.
- Underground installation minimizes potential for disruption.
- May facilitate coordination of other service facilities (fiber optic, water).

Con:

- None noted

Adoption of the resolution is recommended.

**RESOLUTION BOOK NO. 35 - PAGE 184**

**E. RESOLUTION AMENDING THE 2013 CITY COUNCIL MEETING SCHEDULE TO (1) INCLUDE A SPECIAL MEETING ON THE CHARLOTTE STREET**

**COMPREHENSIVE TRAFFIC STUDY REPORT ON APRIL 30, 2013, AT 3:30 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF CITY HALL; (2) CANCEL THE JULY 30 AND OCTOBER 29 COMMUNITY MEETINGS; AND (3) ADD BUDGET WORKSESSIONS ON MARCH 12, 2013, AND MARCH 19, 2013, AT 2:00 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF CITY HALL**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**F. RESOLUTION NO. 13-35 - RESOLUTION AUTHORIZING THE STANDARDIZATION OF ASHEVILLE POLICE DEPARTMENT PURCHASES WITH GLOCK INC. PISTOLS FOR CONSISTENCY IN OPERATION AND FUNCTIONALITY**

Summary: The consideration of a resolution authorizing the standardization of Asheville Police Department purchases with Glock Inc. pistols for consistency in operation and functionality.

The Asheville Police Department (APD) has operating funds available for the procurement of Glock pistols. The procurement of these items will enhance officers ability to respond to various tactical incidents and high risk scenarios involving risk to officers and the public. Purchases will be made to purchase replacement pistols when current ones reach the end of life and/or as we see a need for additional pistols.

Our department has been utilizing Glock Inc pistols department wide since 2009. By continuing to purchase Glock pistols it will allow all officers to be issued the same equipment which will aid in our training techniques but also our officer safety techniques. Our instructors will be able to focus on individual techniques involving Glock equipment, and be consistent with their fellow officers' equipment.

Glock Inc was founded in 1981 and has firmly established Glock pistols as the standard by which all others are compared. Today, they are a leading global manufacturer of pistols, precisely engineered to meet the demanding specifications of military and law enforcement agencies worldwide. That powerful validation, and their reputation for safety, durability, reliability, and ease of use, has made their complete line of GLOCK pistols the choice for millions who aspire to carry the perfect firearm for the mission at hand.

Glock sell through authorized distributors who respond to bids or tenders. For the state of North Carolina, GLOCK Inc. has identified Craig's Firearm Supply Inc as their only authorized distributor.

This action complies with the Strategic Operating Plan by better equipping the Police Department with upgraded equipment; and will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

Pros:

- Consistency with training and equipment used
- Consistency in equipment when replaced or inventory is increased

Con:

- None

The exception to bid will have not fiscal impact beyond the regular cost of outfitting new officers and replacing damaged or broken equipment. Funds are allocated within the operating budget for equipment repairs and needed material.

City staff recommends City Council adopt resolution authorizing the Asheville Police Department to purchase Glock Inc. pistols on standardization needs with funding from approved department budget lines.

**RESOLUTION BOOK NO. 35 - PAGE 187**

**G. RESOLUTION NO. 13-36 - RESOLUTION AUTHORIZING THE STANDARDIZATION OF ASHEVILLE POLICE DEPARTMENT PURCHASES WITH SAFARILAND DUTY GEAR FOR CONSISTENCY IN OPERATION AND FUNCTIONALITY**

Summary: The consideration of a resolution authorizing the standardization of Asheville Police Department purchases with Safariland Duty Gear for consistency in operation and functionality.

The Asheville Police Department (APD) has operating funds available for the procurement of Leather and Nylon Tactical Duty Gear. The procurement of these items will enhance officers' ability to respond to various tactical incidents and high risk scenarios involving risk to officers and the public. Purchases will be made as new officers are hired and as current equipment needs to be replaced.

Standardizing our gear will allow all officers to be issued the same equipment which will aid in our training techniques but also our officer safety techniques. Our instructors will be able to focus on individual techniques involving the officers but will also be able to teach them to use their fellow officers' equipment also.

Currently we have an assortment of leather duty gear from previous years of minimum standards and whoever provided the lowest bid. Due to this we have 5 different product models that we have to train our officers in how to use and operate.

Safariland, LLC, is a company with a history in the law enforcement market for 50 years. This group comprises a group of recognized and well respected brands known for their innovation and quality. Safariland sell through authorized distributors that respond to bids or tenders. For the state of North Carolina, Safariland has identified Lawmen's Safety Supply as their only authorized distributor.

Safariland has been saving lives by providing the most recognized and most trusted law-enforcement products in the world. Safariland, Inc is made up of American Body Armor, Safariland Duty Gear, and Defense Technology. Safariland also owns the following companies that manufacture law enforcement gear: Bianchi, Second Chance, PROTECH, Break-Free, Monadnock, Hatch, Bianchi, and Forensics Source.

Legendary for quality and innovation, Safariland Duty Gear is the overwhelming choice of law enforcement agencies around the world. Comprising both the Safariland and Bianchi brands this offers the industry's most extensive range of top-quality products. Prodcut lines within the Duty Gear category are holsters, belts, accessories, restraints and optics.

This action complies with the Strategic Operating Plan by better equipping the Police Department with upgraded equipment; and will assist in making Asheville a safer city, by providing quality duty gear for our officers.

Pros:

- Known product
- Consistency with training and equipment used
- Consistency in equipment when replaced or inventory is increased.

Con:

- Eliminates bid process

The exception to bid will have not fiscal impact beyond the regular cost of outfitting new officers and replacing damage equipment.

City staff recommends City Council adopt resolution authorizing the Asheville Police Department to purchase Safariland Duty Gear on standardization needs with funding from approved department budget lines.

**RESOLUTION BOOK NO. 35 - PAGE 188**

**H. RESOLUTION NO. 13-37 - RESOLUTION AUTHORIZING THE STANDARDIZATION OF ASHEVILLE POLICE DEPARTMENT PURCHASES WITH LASER TECHNOLOGY INC. FOR CONSISTENCY IN OPERATION AND FUNCTIONALITY**

Summary: The consideration of a resolution authorizing the standardization of Asheville Police Department purchases with Laser Technology Inc. for consistency in operation and functionality.

The Asheville Police Department (APD) has operating funds available for the procurement of Laser Technology Inc. items. The procurement of these items will enhance officer's ability to enforce traffic laws and reduce traffic collisions in dangerous areas. This purchase will allow for the replacement of speed and distant lasers when current ones reach the end of life and/or as we see a need for additional lasers.

APD has been utilizing Laser Technology Inc. speed and distant lasers department wide for several years. By continuing to purchase Laser Technology Inc. speed and distant lasers it will allow all officers to be issued the same equipment which will aid in our training techniques. Our instructors will be able to focus on individual techniques involving Laser Technology Inc. lasers, and be consistent with their fellow officers' equipment when the officer moves from vehicle to vehicle.

Everyone in the measurement business claims they are "The Leaders" in the industry, but no one can claim they are the true pioneers in reflector less measurement. Laser Technology Inc. started working with the US government over 24 years ago by designing lasers that measured distances between 2 planes in-flight for a de-icing exercise. They won a contract with NASA to build a custom laser that could measure both distances and speeds for space docking missions. They also partnered up with Bushnell Optics and designed the first low-cost recreational rangefinder for golfing and hunting. They developed the first commercial laser speed enforcement tool for the law enforcement community. Their first professional measurement device was a hand-held reflector less total station that eventually began the GPS laser offset craze.

Laser Technology Inc. is a sole source provider and does not allow anyone else to sell their product.

This action complies with the Strategic Operating Plan by better equipping the Police Department with upgraded equipment; and will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

Pros:

- Consistency with training and equipment used
- Consistency in equipment when replaced or inventory is increased

Con:

- None

The exception to bid will have not fiscal impact beyond the regular cost of outfitting new officers and replacing damaged or broken equipment. Funds are allocated within the operating budget for equipment repairs and needed material.

City staff recommends City Council adopt resolution authorizing the Asheville Police Department to purchase Laser Technology Inc. speed and distant lasers on standardization needs with funding from approved department budget lines.

**RESOLUTION BOOK NO. 35 - PAGE 189**

**I. RESOLUTION NO. 13-38 - RESOLUTION AUTHORIZING THE STANDARDIZATION OF ASHEVILLE POLICE DEPARTMENT PURCHASES WITH TASER INTERNATIONAL FOR CONSISTENCY IN OPERATION AND FUNCTIONALITY**

Summary: The consideration of a resolution authorizing the standardization of Asheville Police Department purchases with Taser International products for consistency in operation and functionality.

The Asheville Police Department (APD) has operating funds available for the procurement of Taser products. The procurement of these items will enhance officers' ability to respond to various tactical incidents and high risk scenarios involving risk to officers and the public. Purchases will be made to purchase replacement tasers when current units reach the end of life and/or as we see a need for additional tasers. Purchase of taser cartridges, holsters and other taser items will be purchased as needed for replacement and training purposes.

Our department has been utilizing Taser International name brand equipment since 2002 and currently has over 100 tasers. By continuing to purchase Taser name brand equipment it will allow all officers to be issued the same equipment which will aid in our training techniques but also our officer safety techniques. Our instructors will be able to focus on individual techniques involving taser equipment, and be consistent with their fellow officers' equipment.

Taser International was founded in 1993 and has remained committed to providing solutions which protect life, protect truth, and protect family. Their industry leading Electronic Control Devices (ECD's) are used worldwide by law enforcement, military, professional security and personal protection markets. TASER ECD's use proprietary technology to incapacitate dangerous combative, or high risk subjects who pose a risk to law enforcement, correction officers, innocent citizens or themselves in a manner that is generally recognized as a safer alternative to other use of force options. The proper and professional use of TASER devices dramatically reduces injury rates for law enforcement officers and suspects.

Taser International sells through authorized distributors who respond to bids or tenders. For the state of North Carolina, Taser International has identified Lawmen's Safety Supply as their only authorized distributor.

This action complies with the Strategic Operating Plan by better equipping the Police Department with upgraded equipment; and will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

Pros:

- Consistency with training and equipment used
- Consistency in equipment when replaced or inventory is increased

Con:

- None

The exception to bid will have not fiscal impact beyond the regular cost of outfitting new officers and replacing damaged or broken equipment. Funds are allocated within the operating budget for equipment repairs and needed material.

City staff recommends City Council adopt resolution authorizing the Asheville Police Department to purchase TASER International Items on standardization needs with funding from approved department budget lines.

**RESOLUTION BOOK NO. 35 - PAGE 190**

**J. RESOLUTION NO. 13-39 - RESOLUTION AUTHORIZING THE STANDARDIZATION OF ASHEVILLE POLICE DEPARTMENT PURCHASES WITH SAFARILAND LLC FOR CONSISTENCY IN OPERATION AND FUNCTIONALITY**

Summary: The consideration of a resolution authorizing the standardization of Asheville Police Department purchases with Safariland LLC for tactical body armor and rifle plates for consistency in operation and functionality.

The Asheville Police Department (APD) has seizure funds approved for the procurement of Tactical Body Armor and Rifle Plates to be utilized by the police departments Emergency Response Team. The procurement of these items will enhance safety and the departments' ability to respond to various tactical incidents and high risk scenarios involving risk to officers and the public. The current Tactical Body Armor worn by the Emergency Response Team will expire the spring of 2013.

The Emergency Response Team members conducted research of numerous vests from various vendors. The selection process consisted of options and accessories along with the functionality of the vest for the mission of the Emergency Response Team.

The Protech FAV MKII Enhanced Quick Release (QR) Tactical Carrier with the Monarch Series MR01-Type IIIA panels and Protech 2113 MC-3 Rifle Plate are manufactured by Safariland, LLC out of Jacksonville, Florida. Safariland, LLC, is a company with a rich history in the law enforcement market for 50 years. This group comprises recognized and well respected brands known for their innovation and quality. Safariland sell through authorized distributors that respond to bids or tenders. For the state of North Carolina, Safariland has identified Lawmen's Safety Supply as their only authorized distributor.

This action complies with the Strategic Operating Plan by better equipping the Emergency Team with upgraded equipment; and will assist in making Asheville a safer city by providing quality Ballistic Tactical Vest for known violent and armed encounters.

Pros:

- Known for product for comfort and features needed by ERT members
- Consistency in vest worn by members when replaced

Cons:

- Elimination of bid process

The exception to bid will have not fiscal impact beyond the initial cost.

City staff recommends City Council adopt resolution authorizing the Asheville Police Department to purchase Protech FAV MKII Enhanced Quick Release (QR) Tactical Carrier with the Monarch Series MR01-Type IIIA panels and Protech 2113 MC-3 Rifle Plate from Safariland, LLC, based on standardization needs with funding from state seizure monies.

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Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

**ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

**RESOLUTION NO. 13-34 - RESOLUTION AMENDING THE 2013 CITY COUNCIL MEETING SCHEDULE TO (1) INCLUDE A SPECIAL MEETING ON THE CHARLOTTE STREET COMPREHENSIVE TRAFFIC STUDY REPORT ON APRIL 30, 2013, AT 3:30 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF CITY HALL; (2) CANCEL THE JULY 30 COMMUNITY MEETING; (3) ADD BUDGET WORKSESSIONS ON MARCH 12, 2013, AT 2:00 P.M. AND APRIL 3, 2013, AT 3:00 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF CITY HALL; AND (4) ADD A RETREAT MEETING ON MARCH 11, 2013, FROM 8:30 A.M. - 4:00 P.M. IN THE US CELLULAR BANQUET HALL**

Councilman Hunt moved (1) to amend the resolution to remove the budget worksession on March 19 and instead hold it on April 3 at 3:00 p.m. in the First Floor North Conference Room of City Hall; and (2) add a retreat meeting on March 11, 2013, from 8:30 - 4:00 in the U.S. Cellular Center Banquet Hall, with staff programming. This motion was seconded by Councilman Bothwell.

Councilman Smith offered a friendly amendment to amend the resolution to restore the July 30 and October 29 community meetings as they serve a valuable function.

The motion made by Councilman Hunt and seconded by Councilman Bothwell carried unanimously.

After a brief discussion, Councilman Smith withdrew his friendly amendment.

Councilman Smith then moved to cancel the July 30 community meeting only and restore the October 29 community meeting. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Pelly voting "no."

Mayor Bellamy noted that a retreat planning session was planned but cancelled in December. She was disappointed that we will be holding the retreat on March 11 and then have a budget worksession on March 12. She also hoped that when the agenda is developed that Council will discuss our relationships with other entities.

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## III. PRESENTATIONS & REPORTS:

### A. NEIGHBORHOOD ADVISORY COMMITTEE UPDATE

Mr. Saul Chase, Chairman of the Neighborhood Advisory Committee, updated Council on their vision, which is to promote friendly, valued and resilient neighborhoods throughout the City of Asheville. Their mission is (1) to help neighborhoods preserve and improve their physical, economic, and social health utilizing citizen-led improvement initiatives based on needs identified by the residents in each neighborhood; (2) to foster effective communication and working relationships among the neighborhoods and with the City of Asheville; (3) to strengthen neighborhood associations and organizations and to support the formation of new ones; (4) to perpetuate safety, health, vibrant, and sustainable neighborhoods; and (5) to celebrate successes in Asheville's neighborhoods. He asked for Council's official endorsement of their vision and mission.

At Mayor Bellamy's suggestion, Mr. Chase said that they would be happy to help get the information out to the neighborhoods about the City's master plans.

It was the consensus of Council to receive the report and have the City Attorney craft their vision and mission into a resolution which can then be voted on by Council.

Councilman Pelly, liaison to the Neighborhood Advisory Committee, was pleased that they have taken his advice to look at initiatives that won't cost money and those that are part of Council's Strategic Operating Plan.

On behalf of City Council, Mayor Bellamy thanked Mr. Chase for his leadership and the entire Committee for their dedication.

### B. NOISE ORDINANCE APPEALS BOARD UPDATE

Ms. Brenda Sears, Chair of the Noise Ordinance Appeals Board, briefed Council on their activities of the past year and goals for the upcoming year.

On behalf of City Council, Mayor Bellamy thanked Ms. Sears for her leadership and the entire Board for their dedication.

### C. MAYOR'S COMMITTEE FOR CITIZENS WITH DISABILITIES

Ms. Karen Keating, Chair of the Mayor's Committee for Citizens with Disabilities, provided Council with an update on positive points that the City has taken with regard to accessibility, and offered suggestions for additional consideration.

On behalf of City Council, Mayor Bellamy thanked Ms. Keating for her leadership and the entire Committee for their dedication.

When Mayor Bellamy asked for staff support for some administrative functions, e.g., sending minutes out, Councilman Davis felt that would be a good idea to talk about at the upcoming retreat.

### D. WATER RESOURCES UPDATE

Project Manager Phil Kleisler updated City Council on the Water Resources process update from February 12 - February 26, 2013. He then provided Council with the information sharing between the City and MSD.

On behalf of City Council, Mayor Bellamy thanked Mr. Kleisler for his dedication to the City of Asheville as he furthers his career to Estes Park, Colorado.

**E. LEGISLATIVE UPDATE**

Deputy City Manager Jeff Richardson highlighted for Council some legislative issues of interest, some being, but are not limited to: annexation amendment (HB 79); property tax/deannexation (SB 97); Charlotte Regional Airport Authority (HB 104/SB 81); building inspections/local consistency (HB 120); ordinance first reading vote (SB 85); western crime lab funds/amend evident laws (SB 3); operation of mopeds (HB 48); and repeal combination motor vehicle registration/tax system (HB 30).

When Mayor Bellamy asked about our revenue loss if we no longer have control over the extraterritorial jurisdiction (ETJ) area, Executive Director of Finance & Strategic Planning Lauren Bradley said that there will be some revenue loss but could not give the exact figures since they are currently assessing those numbers.

At the request of Councilman Hunt, it was the consensus of Council to authorize City Manager Jackson to meet with the County Manager and perhaps two members of City Council, two members of the Buncombe County Commissioners, both the City and County attorneys, and both the City and County Planning Directors to begin discussion on the pros and cons of eliminating the ETJ on a local level. This discussion is in preparation of whichever version come out of the legislature.

City Attorney Oast said that if the ETJ goes away, the structure of the Planning & Zoning Commission and the Board of Adjustment will change.

**F. QUARTERLY REPORTS**

**Committee Chair Reports**

Vice-Mayor Manheimer, Chairman of the Finance Committee, provided Council with a brief update on some major accomplishments during this quarter.

Vice-Mayor Manheimer, Chairman of the Planning & Economic Development Committee, provided Council with a brief update on some major accomplishments during this quarter.

Councilman Bothwell, Chairman of the Public Safety Committee, provided Council with a brief update on some major accomplishments during this quarter.

**Strategic Operating Plan**

Deputy City Manager Jeff Richardson said that the Asheville City Council identified short and long term goals at the February 3, 2012, strategic planning retreat. Organizational progress in the identified focus areas is tracked using performance indicators and measurements throughout the year. The full update of these findings for the first two quarters July 1, 2012 - December 2012) of fiscal year 2012-2013 can be found through the "Strategic Operating Plan" button on the front page of the City of Asheville's website at www.ashevillenc.gov. He then highlighted the key strategic initiatives that took place during this same time period.

**Financial Report**

Budget Manager Tony McDowell provided Council with the following financial information which reflects the City's overall financial position for the fiscal year through December, 2012. He reviewed the executive summary as follows:

***Amendments.*** The General Fund budget presented in this second quarter report reflects the adopted budget of $89,922,437; along with nine budget amendments approved by Council that totaled $1,259,562. A summary of the amendments is presented below. The only amendment that involved an appropriation from fund balance was the $650,000 approved for employee bonuses. The $63,000 for the firing range mitigation project was appropriated from unexpended capital funds that were being held in reserve.

| | |
|---|---|
| Adopted Budget | $89,922,437 |
| Budget Amendments: | |
| NC Arts Council Grassroots Arts Grant | 50,431 |
| Linamar ED Incentive | 200,000 |
| Firing Range Mitigation Project | 63,000 |
| Public Housing Police Unit Partnership | 217,000 |
| RENCI Grove Arcade Lease | 36,096 |
| Plasticard Locktech ED Incentive | 13,400 |
| Employee Bonus** | 650,000 |
| Community Center Grants | 7,834 |
| Energy Rebates | 21,801 |
| 12/31/2012 Budget | $91,181,999 |

** Fund Balance Usage

***Revenues.*** Through December 31, 2012, the City has collected $52,918,585 in General Fund revenue, which represents approximately 58.5% of the total General Fund revenue budget. The percentage of revenue collected compared to budget is almost identical to the previous year's percentage through two quarters. Staff received property tax data from Buncombe County in January that showed that the FY 2012-13 assessed valuation grew by only 0.6%. As a result, staff has revised downward the property tax revenue estimate for the current year. Sales tax revenue, which is up 6.3% compared to the same period last fiscal year, is tracking closely to the budget forecast. Through two quarters, state utility tax revenue continues to trend below budget. In total, *FY 2012-13 General Fund revenue is currently projected to come in $520,000 or 0.57% in under budget.*

***Expenditures.*** General Fund expenditures through December 30, 2012 total $41,653,448 or 45.7% of budget. At this point in FY 2011-12 expenditures were at 46.0% of budget – so expenditures trends are very similar to the prior fiscal year. Personnel expenses, the largest component of the General Fund budget, are projected to come in on budget. Expenditures for fuel and fleet maintenance continue to run slightly ahead of budget. *Based on expenditure patterns in the previous fiscal year and the trends noted above, staff is projecting that expenditures will finish the year at 99.1% of budget or approximately $855,000 under budget, which will more than offset the expected revenue shortfall.*

***Fund Balance.*** The City ended FY 2011-12 with available fund balance of $13.63 million, which equated to 15.9% of FY 2011-12 expenditures. At the November 13th meeting, Council approved the use of $650,000 in fund balance for one-time employee salary bonuses. *Factoring in this fund balance usage along with current revenue and revenue projections for FY 2012-13, staff estimates that available fund balance at June 30, 2013 will be $13.3 million or 15.0% of estimated expenditures.*

Mr. McDowell responded to some questions raised by Council regarding the City's financial position.

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## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING TO REZONE 152 MONTFORD AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

### ORDINANCE NO. 4167 - ORDINANCE TO REZONE 152 MONTFORD AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone 152 Montford Avenue from RM-8 Residential Multi-Family Medium Density District to Neighborhood Business District. This public hearing was advertised on February 15 and 22, 2013.

Mr. Esselsytn said that this property; the one-sixth-acre site occupies a corner lot at the high-profile Montford Avenue-West Chestnut Street intersection and contains a distinctive building. Historic records indicate the building was built before 1907. The applicant asserts (but staff has not verified) that the original use was a dry goods store, followed by a grocery market. Property records indicate that in 1972 the Pentecostal Tabernacle acquired the property and subsequently began to use it as a church.

Places of worship are a use by right (subject to special requirements) in the existing RM8 zoning district, but the applicant, who purchased the property this past December, is interested in pursuing other non-residential uses. Section 7-8-1 of the Unified Development Ordinance (UDO) provides that the proposed zoning district, Neighborhood Business (NB), can support, for example, offices, health and fitness facilities, eating and drinking establishments, and retail sales (the latter two would be subject to special requirements). The district does not allow some uses allowed in other mixed-use districts however, such as banks, clinics, or funeral establishments.

> Section 7-8-8 of the UDO sets forth the purpose of the proposed district:
> *The Neighborhood Business District is established to reserve areas for low-intensity business centers which are accessible to pedestrians from the surrounding residential neighborhood. The intent of the district is to provide for the daily convenience and personal service needs of the surrounding residential neighborhood while minimizing conflicts with surrounding residential uses. This district is designed to be located within or adjacent to residential neighborhoods where large commercial operations are inappropriate, but where small neighborhood oriented businesses are useful and desirable.*

Since the property is currently surrounded by the same RM8 district, the proposed rezoning would establish a one-sixth acre, isolated zoning district. Elsewhere in the city, or with another zoning district, such a configuration might be discouraged or characterized as spot-zoning, but the NB district is intended for use in small "pockets," and examples of small islands of NB zoning at intersections surrounded by residential zoning exist in multiple older Asheville neighborhoods. Indeed, perhaps most noteworthy, similar instances of small NB nodes can be found one long block north of the subject site (Nine Mile restaurant), and one long block south (Tod's Tasties).

If the zoning change is approved, there will likely be some design challenges for whatever use is pursued. The Neighborhood Business zoning would require a 20-foot wide landscape buffer against the adjacent RM8 zoning to the south and west, but the arrangement of the parking area, which is also currently used by the two adjacent properties for access to their own driveways/parking, would preclude installing such a buffer in its entirety, so some sort of alternative compliance would likely be sought. Further, the platted alley to the west of the lot is partially paved, but partially vegetated, and the driveway entrance doesn't align with the alley;

while there are allowances for a driveway entrance to penetrate a buffer, a fully-compliant buffer would be problematic for the vehicular access not only to this property, but to the adjacent properties as well.

These landscaping challenges need not be considered in detail as part of this rezoning petition—the choices for how to address them will depend on the specific use proposed, as well as the design of the future site improvements. Staff in the Transportation Department has indicated that any transportation improvements will also depend on the proposed use. The intersection of Montford Avenue and West Chestnut Street is an unusual intersection where the east and west sections of West Chestnut are offset, and the section adjacent to this site has a stop sign, separate from the traffic signal controlling the other three arms of the intersection. A new use introducing a substantial increase in traffic could potentially trigger changes to the intersection or the signalization.

While these obstacles would confront a future commercial use, staff recognizes that the architecture (designed for retail/church use) could prove an awkward fit for re-use as a residence. Further, the Montford Historic District Design guidelines could limit how the building could be altered to accommodate a residential use. The Historic Resources Commission Director is aware of the rezoning petition and has indicated no opposition.

Staff has received approximately ten communications from citizens, as well as a written letter of support from the Montford Neighborhood Association. While about half of the citizens who contacted staff were wholly in favor of the rezoning, most of the others weren't opposed to commercial occupancy, but had concerns about specific uses. One citizen was firmly opposed, with the primary concerns being traffic and parking.

At their February 6, 2013, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning request.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Consistent with existing instances of Neighborhood Business zoning on same corridor.
- The Comprehensive Plan promotes adaptive reuse of such sites.
- Building architecture is better suited for commercial use than residential.

Cons:

- Challenges will likely exist for developer in meeting development standards for parking and landscaping.
- If use is changed to a low-impact use, site improvements other than buffers may not be required.

Staff feels that there is encouraging precedent for such nodes of Neighborhood Business zoning to work well along Montford Avenue. The building, originally designed for commercial use, doesn't appear to have ever primarily served as a home, and the 2025 Plan encourages repurposing such sites for non-residential use, "while ensuring that neighborhood compatibility and public safety goals are met." Staff finds the request is reasonable, is confident that existing standards will address the compatibility and safety goals, and recommends approval of the rezoning request.

Mayor Bellamy opened the public hearing at 6:44 p.m.

Mr. Michael McDonough, applicant, said that because they purchased the property two months ago, at this time they have no specific intended use for it.

In response to a neighbor about possible additional work at the intersection, Mr. Esselstyn said that it will really depend on the specific use of the property and how much traffic the use would generate. He did note that the Traffic Engineer said that if more traffic were generated that the most likely modification would be an extra leg on the traffic signal (which section to the site now has a stop sign).

Mayor Bellamy closed the public hearing at 6:47 p.m.

In response to Councilman Bothwell, Mr. Esselstyn said that the Neighborhood Business District does not allow a drive-through.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hunt found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4167. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 153**

**B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE ADDITIONAL CLARIFICATION FOR TWO-STORY REQUIREMENTS FOR NEW CONSTRUCTION AND ALLOWANCES FOR ONE-STORY ADDITIONS TO EXISTING BUILDINGS AND FOR ACCESSORY STRUCTURES**

**ORDINANCE NO. 4168 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO PROVIDE ADDITIONAL CLARIFICATION FOR TWO-STORY REQUIREMENTS FOR NEW CONSTRUCTION AND ALLOWANCES FOR ONE-STORY ADDITIONS TO EXISTING BUILDINGS AND FOR ACCESSORY STRUCTURES**

Urban Planner Alan Glines said that this is the consideration of an ordinance to Amend Chapter 7 of the Code of Ordinances to provide additional clarification for two-story requirements for new construction and allowances for one-story additions to existing buildings and for accessory structures. This public hearing was advertised on February 15 and 22, 2013.

Mr. Glines said that the most recent changes to the regulations governing the Central Business District were adopted in November 2010; based on the recommendations from the *Downtown Master Plan*. When the master plan was created in 2008 and 2009, it was anticipated that most new development projects would be larger new multi-story structures. Since that time, primarily due to the economic downturn and limited availability of financing for large projects, the new development that has occurred has primarily been on a more limited scale involving the renovation and expansions of smaller existing buildings. While we are beginning to see a pickup of interest in larger scale projects, the interest in these smaller projects continues and we have observed that certain aspects of the adopted regulations are somewhat problematic for those projects. The greatest interest has been in renovating existing one-story buildings or expanding and adding to these buildings, primarily in areas that surround the traditional downtown core.

Preservation of historic buildings is an identified goal of the master plan and these projects help to preserve buildings and make them feasible for reuse by extending their functional life. These renovations are also providing "incubator" locations for startup or smaller businesses.

The challenge we are seeing is that because new one-story construction is not allowed in the central business district zone variances are required for a number of these additions which are often one-story additions to an existing building. As this issue has been studied and considered after consideration of four recent variances, staff is proposing clarifications and modifications to several segments of the regulations. The modifications affect regulations for two-story buildings, one-story additions, and setback requirements. They will ease approvals for situations as described below.

For new construction the building is expected to be close to the frontage line of the parcel but additional setbacks are allowed for courtyard spaces, dining uses and other lawn areas for residential and institutional uses. Yet when an addition is contemplated it is with a specific activity in mind to make the commercial endeavor function more effectively and the normal setback rules can be difficult to meet.

Variances are important tools that are intended to provide relief from standards in an ordinance for unexpected or unusual hardships. When the requested variances are common enough to seem repetitive, and relief is usually granted, a wording change correcting the problem may be justified. One additional factor about the variance process is that it represents a delay for the developer of at least two months and because a variance process is quasi-judicial in review, the final outcome is uncertain. When the master plan was developed and agreed to by various stakeholders, one of the goals was to develop a set of rules that everyone could agree to thus reducing uncertainty for the development community. It is with this background that the wording amendment is proposed.

**Summary of Proposed Changes**:

**Two-story height**- The CBD requires that new buildings be constructed to a minimum height of two-stories. One aspect of the wording change specifies a dimension in feet so that the actual height requirements will be more easily understood. The proposed amendment also clarifies that the second story will need to cover the full first-floor footprint area. There is no proposed amendment to allow single-story buildings 'by right'. If there is a true hardship in meeting that basic requirement a variance could be requested. It has been reiterated through this process that the second story represents a long-term sustainable investment in downtown that supports the tax base of the city and can maintain the vitality and diversity of the area.

**One-story additions-** Additions to existing buildings represent economic and financial investment in the central business district and are common when a property is renovated. The proposed wording amendment recognizes that single-story additions to existing buildings are anticipated and will be more appropriate in situations where they do not overwhelm the scale of the existing building. This amendment will limit the size of the additions covered by the ordinance and provide placement options (setback parameters) relating to the existing building.

**Accessory structures-** The existing ordinance permits accessory structures in the central business district but is not clear where on the lot they are allowed. The proposed wording amendment will provide clarity on placement of accessory structures. Typically accessory structures are single-story and are placed at the rear of the parcel for storage or for other specific activities. Restaurants have at times constructed accessory structures in the form of a covered canopy for an outdoor dining space at the front of their lot. The proposed amendment would specifically allow such accessory structures to be placed at the front of the lot since they generally energize the activity at the sidewalk.

**Street Wall substitution**- For new construction in downtown, a two-story (or more) *street wall* is required. Recently, there was a conflict with this requirement in a situation where an existing one-story building was being preserved and a larger addition was being added as a part of the project. Because of the way the standard is worded in the UDO the existing single-story section of the project did not meet the street wall definition and requirement. The proposed

amendment will correct this scenario for single story existing buildings that are identified as a contributing structure in the downtown national register district that will be preserved as a part of a development proposal. This amendment will also support other goals of the Downtown Master Plan including preservation of the historic building stock and City adopted goals for sustainability.

**Setback flexibility for additions-** Existing buildings in downtown are 'grandfathered' in the locations they are found which sometimes include non-compliant setbacks (zero setbacks are the basic standard in the CBD). When buildings undergo renovation they may be upgraded to comply with current building standards defined in the building code but the placement of a building is never questioned regarding its compliance with zoning's setback rules. For parcels that have space to build an addition, the usual setback standards apply to the addition too and can pose an unexpected challenge. (These situations are most often being seen outside the center of the CBD in smaller old commercial structures.) Additions are attached to the existing building where they are needed and depending on their proposed function, the internal layout of the existing building or in some cases the building's orientation.

The proposed amendment would provide some relief from this situation which currently requires the approval of a hardship variance. As was noted before, additions are common and even encouraged for the continued vitality of downtown and for the long term viability of individual buildings which furthers the goals of historic preservation.

**Other Central Business District areas: West Asheville-** For the other Central Business Districts such as the two areas found in west Asheville, there are similar development standards like those in place for downtown. There have been a number of renovations of existing buildings but until now few additions. The proposed amendments also make practical sense for these CBD areas and will assist when additions to existing structures are proposed. The information was shared with representatives of the Haywood Road Corridor Study Group and although the number of comments received was limited all who commented supported the idea of the proposed amendment. As the proposal for a Form Based Code gets underway for Haywood Road, recommendations for changes may be identified and brought forward for adoption.

This action complies with the following plans: (1) *Strategic Operating Plan*: This action complies with the City Council Strategic Operating Plan goals of implementing community adopted plans with reasonable regulations to assure a balanced approach to managing the community's resources and encouraging redevelopment and continued investment; (2) *Downtown Master Plan*: The Downtown Master Plan provided a framework to ensure that the downtown is protected and that the environment is enhanced and continues to grow and prosper. This amendment aligns with the broader goals of the plan such as business growth and investment and preservation of the existing building stock; and (3) *Haywood Road Plan*: The Haywood Road Plan is currently in draft form but the amendment will support and identified goal to preserve existing historic buildings along the corridor and especially structures within the two national register districts. The proposed amendments recognize the value of existing structures and removes an impediment for renovation and expansion for new and existing businesses.

The Downtown Commission reviewed the proposed amendment at their meeting on December 14, 2012, and unanimously endorsed the amendment (vote 11-0 to recommend approval). Although the Haywood Road Corridor Study Group has suspended regular meetings, the amendment was shared with them for comment and while the responses were limited, the seven comments that were received were positive about the proposal.

The Planning and Zoning Commission reviewed the proposed amendment at their meeting on February 6, 2013 (vote 5-0 to recommend approval) and informally at a mid-month meeting on December 20, 2012. The Commission discussed in detail the requirements for the two-story minimum standards for new construction and recommended changes that are incorporated into the proposed ordinance. With the current proposal, the Commission wanted to

emphasize the value the second story represents to the tax base of the city and the vitality of CBD zoned areas.

Pros:

- Allows the ordinance to adapt to current trends and opportunities
- Removes a deterrent to continued investment in key areas of the city
- Establishes reasonable standards to maintain the community's character

Con:

- The nature of some ordinances is such that they require review and adjusting over time

City staff recommends that the City Council approve the amendments to the Unified Development Ordinance as described in the staff report and ordinance.

Mayor Bellamy opened the public hearing at 6:58 p.m. and when no one spoke, she closed the public hearing at 6:58 p.m.

In response to Councilman Davis, Mr. Glines read the definition of an accessory building out of the Unified Development Ordinance.

Mr. Glines responded to Councilman Bothwell regarding the 24 foot height. Planning & Development Director Judy Daniel said that perhaps the Sustainability Advisory Committee of Energy & the Environment can look at the issue of the height from an energy efficiency standpoint.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4168. This motion was seconded by Councilman Bothwell and carried unanimously.

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**V. UNFINISHED BUSINESS:**

**A. MOTION ADOPTING FINDINGS OF FACT SUPPORTING RESOLUTION TO CLOSE MOODY AVENUE**

Assistant City Attorney Martha McGlohon said that at a public hearing held on November 22, 2011, City Council adopted a Resolution closing Moody Alley. Moody Alley is an unopened, undeveloped Alley with 13 adjoining property owners, running between Nevada Avenue and Nebraska Street, in West Asheville. The resolution closing the Alley was appealed to the Buncombe County Superior Court. The Superior Court remanded the matter back to this Council for the entry of Findings of Fact to support the resolution to close.

During the summer of 2011, Jay Fiano began bulldozing Moody Alley to provide secondary access to an L-shaped lot that he created after subdividing the property. The neighbors obtained a temporary restraining order. Subsequent thereto, upon request, City Council initiated a closing of the alley. After following the statutory procedures set forth in NCGS §160A-299, on November 22, 2011, Council held a public hearing and adopted a resolution closing the alley. Jay Fiano appealed the closing to the Buncombe County Superior Court. The matter came on for hearing before the Honorable C. Philip Ginn on 1/8/13. Judge Ginn stated that he could not determine if Council's action in closing the alley was consistent with NCGS §160A-299, without findings of fact, other than those set forth in the resolution. By Order filed

1/9/13, Judge Ginn remanded the matter back to this Council to enter Findings of Fact to support the resolution to close.

Council is not being asked to re-open the public hearing or reconsider its decision. Council is only being asked to provide additional findings to support the resolution closing the alley. The additional findings that support the resolution closing the alley have been provided to Council.

Pro:

- Complies with the Court's directive

Con:

- Sets a precedent for future street closings

The City Attorney's Office recommends that City Council adopt the findings of fact to support the resolution to close Moody Alley.

Ms. McGlohon said that two members of Council were not sworn in at the time of the hearing. If Councilman Hunt and Councilman Pelly feel that they have familiarized themselves with the facts, she felt they could vote on the matter. Councilman Hunt and Councilman Pelly stated that they are familiar with the case and would be able to vote.

Ms. McGlohon said that Mr. Tikkun A.S. Gottschalk and Mr. Robert J. Deutsch (attorneys for the Fianos) have objected to Council proceeding to adopt these findings of fact without a new notice and a new public hearing. They were not able to stay for the remainder of the meeting but they provided her with a copy of their written "Objections to Adoption of Findings of Fact" and she advised them that she would provide them to the City Clerk. At this time, Ms. McGlohon handed the City Clerk with copies of "Objection to Adoption of Findings of Fact" dated February 26, 2012 (sic) signed by Mr. Tikkun A.S. Gottschalk and Mr. Robert J. Deutsch.

Vice-Mayor Manheimer said that Mr. Gottschalk said to her that he would not be permitted to make public comment and that is why they did not stay for the issue. They did say they would submit their objections in writing. Ms. McGlohon clarified that she did not inform Mr. Gottschalk that he could not make public comment, but that it would be left up to City Council to determine whether or not he would be allowed to address Council, but she was prepared to hand their objections to the City Clerk.

When Mayor Bellamy asked City Attorney Oast about one of their objections stating that adoption of the findings of fact would be contrary to the City Charter, City Attorney Oast responded that he disagreed with their objection.

When Mayor Bellamy asked for public comment, no one spoke.

Councilman Smith moved to adopt the findings of fact provided by the City Attorney's Office to support the resolution to close Moody Alley. This motion was seconded by Councilman Bothwell and carried unanimously.

**VI. NEW BUSINESS: None**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. H. L. Carlisle spoke to Council about the need for public safety employees pay raises.

There was a brief discussion, initiated by Mayor Bellamy, to reschedule the interviews and appointment of the Asheville City Board of Education candidates due to spring break during

the week of March 25-29. City Attorney Oast said that he would review the law to see if the appointments could be made on April 1 and report back to Council after closed session.

**Closed Session**

At 7:32 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The location of the property is Amboy Road adjacent to Carrier Park. The statutory authorization is contained in G.S. 143-318.11(a)(5); (2) (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing payment of economic development incentives will occur in open session. The statutory authorization is contained in G.S. 143-318.11(a)(4); (3) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or initial employment of an individual prospective public officer or employee. The statutory authorization is contained in G.S. 143-318.11 (a) (3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11 (a) (6); and (4) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 8:20 p.m., Councilman Davis moved to come out of closed session and return to the formal meeting. This motion was seconded by Councilman Bothwell and carried unanimously.

**Asheville City Board of Education Interviews and Appointments**

City Attorney Oast reviewed the law regarding the City's appointments to the Asheville City Board of Education and advised Council that the appointments must be made in the month of March. Therefore, it was the consensus of Council to interview candidates at 10:00 a.m. on March 12, 2013, and make the appointments later that evening at their formal meeting.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 8:40 p.m.

Magdalen Bowlson
CITY CLERK

MAYOR

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Tuesday – March 12, 2013- 2:00 p.m.
First Floor North Conference Room

Worksession

City Council held a budget briefing, using the goals and action items outlined at their retreat on March 11, to obtain budget policy direction on the following items:

(1) Market based compensation - After presentation by Fox Lawson & Associates and Council discussion, it was the consensus of Council to direct City staff to proceed with the staff's basic recommendations which is a 3% across the board increase for all employees. She explained staff is recommending (1) we adjust non-exempt and exempt pay ranges up 3%, (adjust non-exempt and exempt employee compensation up the same); (2) even though the study recommends the executive structure range be increased by 10%, staff recommends a 3% increase in the executive pay; and and (3) even though there is no recommendation to any public safety structure, because the step plans have not been funded, staff's recommendation would be to fund a step increase of 3% for public safety employees. Temporary and seasonal employees would also receive a 3% increase.

(2) BID proposal - Due to the absence of any BID Board representatives, Executive Director of Finance & Strategic Planning Lauren Bradley believed that there may have been a miscommunication about their presence being required at this worksession to discuss their budget, although they were aware they were to attend the March 12 formal meeting to discuss approval of their by-laws. Staff did meet with BID Board representatives on Friday, March 8 and reviewed several various options. On March 8, staff requested the BID come back with a detailed budget to understand their expectations (how many miles of street cleaning, how often pressure washing would take place, etc.). She thought that perhaps they believed the budget would be discussed at the March 26 formal meeting, when the BID tax rate would be discussed. Mayor Bellamy, along with Council, was disappointed that the BID budget was not ready to be presented at this time to allow Council to ask questions prior to the March 26 meeting. After discussion, it was the consensus of Council to request the BID budget be e-mailed to Council by Monday, March 18, along with staff's analysis, in time for Council and the public to review it.

(3) Financial forecast & proposed fees and charges- Ms. Bradley provided Council with an overview of the Fiscal Year 2014 General Fund budget forecast. She presented the budget balancing strategies regarding revenue options which included (1) solid waste reduction program - dropping the $3.50 monthly fee per household for recycling services and substituting a $7.00/month fee for trash pick-up; and (2) Friends of the Nature Center funding partnership. Budget balancing strategies regarding expenditure options include (1) offer early retirement incentive and freeze/eliminate 10 positions; (2) line item reductions; (3) re-engineer City's role with festivals and special events; and (4) restructure staffing at special facilities. Other factors include (1) impact of State legislative revenue reform initiatives (privilege license $1.7 Million, sales tax changes); (2) impact of revaluation on sales tax revenues; (3) impact of possible water system transfer ($1.8 Million); and (4) adjustment to development review revenues without extra-territorial jurisdiction ($200,000). She noted that the $85,000 that the BID Board will be asking for is not built into any scenarios. Ms. Bradley and Executive Director of Public Works and Multimodal Transportation responded to various questions of Council, and after considerable discussion, it was the consensus of Council to direct City staff to proceed with the items outlined to build the City Manager's recommended budget. In addition, after discussion, it was the consensus of Council (1) to direct staff to analyze picking up trash one week and recycling the next week; (2) allow people who do not have a degree to have an opportunity to work for the City; (3) discontinue the City's hosting Bele Chere in 2014 (allowing non-profits and others who rely on it one year to adjust), but to keep $200,000 for the 4th of July celebration and other partnership opportunities; and (4) to direct staff to look at an alternative staffing structure than closing down and locking Aston Park Tennis Courts and the Food Lion Skateboard Park like other park facilities

(from dusk to dawn), due to safety and graffiti/maintenance concerns. Ms. Bradley previewed the fees and charges recommendations, which will be coming forward to Council on March 26.

At 4:23 p.m., Vice-Mayor Manheimer recessed the meeting until the 5:00 p.m. formal meeting.

Regular Meeting - 5:00 p.m.

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Davis gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF WARREN WILSON MEN'S BASKETBALL NATIONAL CHAMPIONSHIP TEAM**

On behalf of City Council, Councilman Smith was proud to recognize Ms. Stacy Enos, Sports Athletic Director, Coaches and the Warren Wilson Men's Basketball Team for their USCAA Division II Championship Win.

**B. PROCLAMATION PROCLAIMING MARCH 2013 AS "DEVELOPMENTAL DISABILITIES AWARENESS MONTH"**

Mayor Bellamy read the proclamation proclaiming March, 2013, as "Developmental Disabilities Awareness Month" in the City of Asheville. She presented the proclamation to Ms. Linda McDaniel, representing ARC of Buncombe County, who briefed City Council on some activities taking place during the month.

**C. PROCLAMATION PROCLAIMING MARCH 2013 AS "WOMEN'S HISTORY MONTH"**

Mayor Bellamy read the proclamation proclaiming March, 2013, as "Women's History Month" in the City of Asheville.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 26, 2013**

**B. ORDINANCE NO. 4169 - BUDGET AMENDMENT TO PURCHASE ONE DIESEL BUS**

Summary: The consideration of a budget amendment in the amount of $400,000 from Federal Transit Administration (FTA) funds, Transit Fund Capital Reserves and General Capital Project Reserves, to purchase one 30-foot diesel bus using the current contract with Gillig, Inc.

During June 2012, the City of Asheville received funding from the Federal Transit Administration under the Bus and Bus Facilities, Livability Program, to purchase one 30-foot bus to replace one of the two remaining 1996 buses. The City has allocated its share of the required 20% local match but we have been unable to leverage the share that typically comes from the North Carolina Department of Transportation (NCDOT).

The total project cost is about $400,000. The Federal Transit Administration (FTA) will fund 80% ($320,000) and the City will fund the remaining 20% ($80,000). Federal Transit Administration procedures require that obligated grants be executed or encumbered no later than one year after the obligation date which is June 2013. If the funds have not been used by that timeframe, the Federal Transit Administration can proceed to de-obligate the funds. Not only could the City lose the Federal grant, it would set a bad precedent that could reflect in the City's ability to leverage Federal funds in the future.

In addition, the cost of maintaining the 1996 buses is high, the buses require expensive and frequent maintenance, fuel efficiency is poor and their impact in the environment is higher since their engines were not manufactured under the newest Environmental Protection Act regulations.

The City will order the bus immediately under the current contract with Gillig, LLC. and the delivery date will be 12 months.

This action complies with the current City Council's Strategic Operating Plan in the fiscal responsibility focus area by operating the City of Asheville to the highest levels of fiscal responsibility.

This item has been reviewed and endorsed by the Transit Commission in their February 5, 2013, meeting.

Pros:

- The City will replace one of the last aged buses and produce savings in maintenance costs and fuel costs.
- The Federal Transit Administration (FTA) would fund 80% of the subject project cost.

Con:

- Funding to cover the additional 20% match will have to be taken from Transit Capital Reserves and General Capital Reserves.

The cost of the project is approximately $400,000. 80% will be funded by the FTA, with the remaining 20% or $80,000 funded by the City. There is currently $26,177 available in unexpended Transit Capital funds that can be allocated toward this match. The remaining $53,823 will come from unexpended General Capital funds that have accumulated from projects that came in under budget. There is currently $135,000 in unexpended funds available in the General Capital Projects Fund. After the appropriation above, the remaining balance will be $81,177. Staff recommends that the $81,177 remaining in general capital reserves be allocated to the FY 2013-14 CIP.

Staff recommends that City Council approve a budget amendment in the amount of $400,000 from Federal Transit Administration (FTA) funds, Transit Fund Capital Reserves and General Capital Project Reserves to purchase one 30-foot diesel bus using the current contract with Gillig, Inc.

**ORDINANCE BOOK NO. 28 - PAGE 160**

**C. RESOLUTION NO. 13-40 - RESOLUTION APPROVING LOCAL ALCOHOLIC BEVERAGE CONTROL BOARD PROPOSAL TO USE PROCEEDS FROM REAL PROPERTY SALES FOR CAPITAL PROJECT**

Summary: N.C. Gen. Stat. sec. 18B-805 (d) authorizes a local ABC board to set aside a portion of its gross receipts as a fund for special capital improvements, with the approval of the appointing authority. The City of Asheville Board of Alcoholic Control has requested approval by the Asheville City Council of its request to set aside the proceeds from the sale of the Board's old store at 209 Tunnel Road from its gross receipts for purposes of required distribution, so that the entirety of the sale proceeds may be used for use for planned capital improvements, specifically a new store at 650 Hendersonville Highway.

Mr. Jim Ellis, Chairman of the ABC Board, spoke in support of this action.

**RESOLUTION BOOK NO. 35 - PAGE 192**

**D. RESOLUTION NO. 13-41 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE FRENCH BROAD RIVER METROPOLITAN PLANNING ORGANIZATION TO REFLECT CHANGES TO COMPLY WITH FEDERAL AND STATE REQUIREMENTS**

Summary: The consideration of a resolution authorizing the Mayor to enter into a Memorandum of Understanding with the French Broad River Metropolitan Planning Organization (FBRMPO), which has been updated to reflect changes in population patterns during the last census and to comply with Federal and State requirements.

The FBRMPO operates under a memorandum of understanding (MOU) between all of the member counties, municipalities, and the North Carolina Department of Transportation. The FBRMPO exists under federal law to provide cooperative, comprehensive and continuing planning for transportation in the region.

The extent of the area for which the FBRMPO must plan is the urbanized area as determined by the population patterns reflected in the decennial census. The latest census (Census 2010) led to the expansion of the urbanized area, which now includes more of Buncombe County and parts of Madison and Transylvania Counties. The FBRMPO may enlarge the urbanized area so that the planning area boundaries make sense and are acceptable to the member jurisdictions.

Jurisdictions within the urbanized area, while represented by the FBRMPO, may choose whether or not to participate. As newly included jurisdictions in the urbanized area, the Town of Mars Hill and Madison County have chosen to join the FBRMPO as full members while Transylvania County has chosen to be only a non-voting, ex-officio member.

Under the last MOU, the FBRMPO boundary included some parcels that are in the Asheville watershed. Buncombe County has requested that these parcels be excluded from the new FBRMPO boundary and included in the adjacent Rural Planning Organization (RPO) area. The parcels are not in the urbanized area, they have no population and few jobs, and they adjoin the area in the northeast corner of the county that is already in the RPO.

Additionally, this MOU:

- Changes the name of the FBRMPO governing body from the "Transportation Advisory Committee" (TAC) to "MPO Board."

- Removes language in several sections that refers to the priority needs list and replaces it with more general prioritization language. The specific prioritization process language will be moved to the FBRMPO by-laws, which are adopted by the FBRMPO governing body. The prioritization process is regulated by the North Carolina Department of Transportation.
- Changes some terms used in former federal transportation bills to match those used in MAP-21, the current federal transportation bill.
- Spells out acronyms in the document.

In recent years, funding coming to the city through the FBRMPO includes:

- Ongoing funding for one transit planning position.
- Federal Transit Administration capital and operations grants.
- The Clingman Avenue streetscape project.
- ARRA transportation projects (resurfacing Kimberly Avenue, Coxe Avenue, constructing sidewalks on Choctaw Street, Evelyn Place, Hendersonville Road, Hilliard Avenue, and Linden Avenue and constructing bicycle facilities on Asheland Avenue, Choctaw Street, Coxe Avenue, Hilliard Avenue, and Martin Luther King Jr. Blvd).
- The RADTIP Study (Environmental Document).
- Upcoming Hendersonville Road and New Leicester Hwy sidewalk/pedestrian crossing projects.
- Upcoming Complete Streets workshop ($8,000 special study money, 80% of anticipated costs, balance of $2,000 from County Health Department, and free U.S. Cellular Center rent for session from City).

This action complies with the City Council Strategic Operating Plan in that continued membership in the FBRMPO will help support the Council's fiscal responsibility, safety, multimodal transportation and community development goals. It does this by leveraging partnerships for capital improvement and infrastructure projects, accessing any remaining Safe Routes to School funding, seeking partnerships for investments in greenway and sidewalk infrastructure, and partnering in key local and regional initiatives.

Council's Planning and Economic Development Committee reviewed this action at their February 26, 2013, meeting, and recommended Council approve joining the updated MOU.

Pros:

- Enables the FBRMPO to meet Federal and State requirements.
- Keeps the City as a voting member of the FBRMPO.
- Enables the City to have access to Federal and State funding.

Con:

- The City pays annual MPO dues of about $18,000.

Currently, the annual dues are $18,000 and they are included in the operating budget of the Transportation Department.

City staff recommends that City Council adopt the memorandum of understanding.

**RESOLUTION BOOK NO. 35 - PAGE 193**

**E. MOTION AUTHORIZING THE MAYOR TO SIGN A LETTER SUPPORTING THE MISSION OF THE MAYOR'S CHALLENGE FOR WATER CONSERVATION AND IN DOING SO RENEW THE COMMITMENT TO SUSTAINABILITY FOR ASHEVILLE AND FOR FUTURE GENERATIONS**

**F. RESOLUTION NO. 13-42 - RESOLUTION EXEMPTING THE NORTH FORK WATER TREATMENT PLAN DAM/TUNNEL EVALUATION & REPAIRS PROJECT FROM THE ANNOUNCEMENT REQUIREMENT OF N.C. GEN. STAT. SEC. 143-64.31 AND AWARDING AN ENGINEERING DESIGN SERVICES CONTRACT TO SCHNABEL ENGINEERING SOUTH, PC, FOR THE OUTLET WORK CONDUIT REHABILITATION**

Summary: The consideration of a resolution to exempt the North Fork Water Treatment Plant Dam/Tunnel Evaluation & Repairs Project from the architectural, engineering and surveying announcement requirement of NCGS §143-64.31; authorize the City Manager to execute an engineering design services contract with Schnabel Engineering South, PC, for the proposal amount of $408,190.00; and authorize a contingency amount of $20,410.00 for a total project budget of $428,600.00 for the rehabilitation of the outlet works conduit at the North Fork Dam.

NCGS §143-64.32 allows a local government to exempt particular projects from the requirements of NCGS §143-64.31. The statute requires that architectural, engineering, and surveying services be announced for competitive selection. For several years, Water Production has used Schnabel Engineering to inspect the dams at the North Fork and William DeBruhl water plants and make recommendations for repairs or improvements. Schnabel is recognized as an expert engineering firm specializing in dam design, construction, and maintenance. On October 25, 2011, City Council also authorized Water Resources to enter into a professional services contract with Schnabel Engineering for the North Fork Water Treatment Plant Dam / Tunnel Evaluation & Repairs Project, which consisted of: (1) evaluating alternatives to address the spillway capacity, (2) a structural evaluation of the outlet works conduit, (3) evaluating the North Fork Dam spillway gates by performing gate inspections and a structural analysis of the gates, (4) conducting EAP training for plant staff, and (5) conducting subsurface investigations.

Water Resources is ready to move into the design phase of this project. Schnabel has presented a scope of work and cost proposal for engineering design services associated with the rehabilitation of the outlet works conduit at the North Fork Dam. The outlet works conduit is the 500-foot tunnel that runs from the intake on Burnett Reservoir, under the North Fork Dam, and to the water plant. This is the first part of the design phase and consists of providing field investigations, survey data, utility location services, structural design of the conduit rehabilitation, and a construction bid package with drawings and specifications.

Schnabel's cost estimate for the first part of the design phase is $408,190.00. A 5% contingency amount of $20,410.00 has been added for a total project budget of $428,600.00.

This project is part of City Council's strategic plan to improve city infrastructure and to operate at the highest levels of fiscal responsibility.

Pro:

- Recognize Schnabel Engineering as the most qualified engineering firm to design the outlet works conduit rehabilitation by exempting the North Fork Water Treatment Plant Dam/Tunnel Evaluation & Repairs Project from the announcement requirement of NCGS §143-64.31.

Con:

- None.

The funding needed for the contract and the contingency is currently allocated within the project in the Water Resources Capital Improvement Projects fund.

City staff recommends City Council adopt a resolution to exempt the North Fork Water Treatment Plant Dam/Tunnel Evaluation & Repairs Project from the architectural, engineering

and surveying announcement requirement of NCGS §143-64.31; authorize the City Manager to execute an engineering design services contract with Schnabel Engineering South, PC, for the proposal amount of $408,190.00; and authorize a contingency amount of $20,410.00 for a total project budget of $428,600.00 for the rehabilitation of the outlet works conduit at the North Fork Dam.

**RESOLUTION BOOK NO. 35 - PAGE 194**

**G. RESOLUTION NO. 13-43 - RESOLUTION TO AMEND THE 2010-11 ACTION PLAN TO MT ZION DEVELOPMENT CORPORATION FOR WORKFORCE HOUSING FEASIBILITY ANALYSIS**

Summary: The consideration of a resolution amending the 2010-2011 Consolidated Annual CDBG and HOME Action Plans, to grant additional funds to Mount Zion Development Corporation to complete feasibility analysis for a proposed affordable and workforce housing rental rehabilitation project.

In 2010, the Mt Zion Development Corporation was granted $50,000 of CDBG funds for housing services for pre-development costs for an affordable and workforce housing development in the three historic mill buildings located on the property on the Mt Zion Church, located at Eagle and Market Streets.

As a result of that pre-development work, a 50 unit development was proposed, that included 10 housing units affordable to households earning 80% of median income and 40 workforce units that would be affordable to households earning 100% of median income. However, in the interval between the original planning and now, the financing environment changed. The estimated cost of the project is significantly higher than the lender-appraised value of the completed project, leaving a significant financing gap.

Mt Zion Development Corporation has proposed a strategy to determine whether the appraisal, proposed market for the project and construction plan can be modified to deliver the project. That strategy involves three major components:

- Contract for a new appraisal: The appraisal performed by the lender used questionable comparables, and did not include recent downtown Asheville transactions. Staff agrees that these are deficiencies that may have contributed to an undervaluing of the Mt Zion land.
- Contract for a new market study: The initial market study was based upon certain criteria about the market to be served by the project, especially the maximum rentals for "workforce housing" located in downtown Asheville. If these criteria were changed, and the market analysis supported the existence of sufficient market for a different rental structure, the project could potentially support more debt.
- Perform value engineering of the proposed construction: The construction plan results in costs that cannot be supported by the current available financing scenarios.

The estimated cost of these elements is $13,000. The recasting of financial pro-formas, preparation of new financing applications, and the management of the additional tasks will be accomplished by Mount Zion Development Corporation with non-federal funds.

Pros:

- The proposed actions will provide essential information to determine whether the project; as planned, can attract sufficient financing for its development.
- The proposed action will enable the feasibility analyses to move forward quickly.

Cons:

- The proposed funding will not be returned into the funding pool for reallocation during the annual competitive cycle.

- If the information gleaned from the analyses indicates the project is not feasible, a different project may need to be developed to address the historic vacant mill buildings owned by the Mount Zion Church.

The proposed amendment governs the use of federal funds already allocated to the City. No City general funds are affected.

The HCD Committee recommends approval of the Action Plan Amendment that would grant Mount Zion Development Corporation an additional $13,000 to perform the additional feasibility analyses, as proposed.

**RESOLUTION BOOK NO. 35 - PAGE 196**

**H. RESOLUTION NO. 13-44 - RESOLUTION TO AMEND THE 2012-13 ACTION PLAN TO ALLOW MOUNTAIN HOUSING OPPORTUNITIES TO RETAIN TIER II EMERGENCY REHABILITATION PROGRAM INCOME FOR ADDITIONAL TIER II EMERGENCY REPAIR ASSISTANCE**

Summary: The consideration of a resolution amending the 2011-2012 and 2012-2013 Consolidated Annual CDBG and HOME Action Plans, and past Action Plans, to allow Mountain Housing Opportunities to retain CDBG program income, generated through its Emergency Repair Tier II program for use in that program.

Mountain Housing Opportunities operates CDBG-funded Emergency Repair programs. These programs provide very-low income, special need homeowners with emergency repairs that enable these homeowners to remain in their existing housing. Repairs up to $5,000 are made in the Tier I program; repairs up to $15,000 are made in Tier II. Tier II assistance is secured by a forgivable lien on the property, with 10% of the assistance amount forgiven each year, with the entire assistance then forgiven at the end of ten years from the date of project completion. If the homeowner is not able to occupy their property for the full ten years, the pro-rated portion of the assistance must be repaid.

MHO provided Tier II assistance to a client who, passed away a little more than 1 year after her home was repaired. The unforgiven portion of the assistance was repaid to MHO by the estate. MHO requests that their CDBG grant agreement (and past and future agreements for this program) be amended to allow these funds (which are program income) to be continued to be used in Emergency Home Repair Tier II program and assist other low income special-needs homeowners in Asheville. Program income is rare in the Tier II model- this is the first program income that has been available in the last six years. MHO indicates it has a significant waiting list for these services.

HUD allows CDBG Entitlement communities to determine how program income is to be used. It can be collected by the City and returned to the CDBG pool for reallocation; or the subgrantee can be given permission to retain the program income. In either case, the program income is treated the same as the original CDBG funds, and its use must comply with all CDBG rules and regulations. It the City allows the subgrantee to retain program income, it must execute a written agreement with the subgrantee regarding the use of the program income.

This action meets the Council Strategic Goals of Affordable by supporting the preservation of affordable homeownership, providing safe, sufficient and affordable housing.

Pro:

- The proposed action will enable program income generated through the Tier II Emergency Repair program to be used for additional emergency repairs, without requiring a specific application from Mountain Housing Opportunities for the reuse of the funds .

Con:

- The program income generated by this program, although rare, would not be put back into the funding pool for reallocation during the annual competitive cycle.

The proposed amendment governs the use of federal funds already allocated to the City. No City general funds are affected.

The HCD Committee recommends approval of the Action Plan Amendment that allows Mountain Housing Opportunities to retain the Tier II program income generated through the Tier II Emergency Repair program for ongoing use as Tier II Emergency Repair funding.

**RESOLUTION BOOK NO. 35 - PAGE 197**

**I. RESOLUTION NO. 13-45 - RESOLUTION AMENDING THE 2013 CITY COUNCIL MEETING SCHEDULE TO CHANGE THE MARCH 26, 2013, FORMAL MEETING TIME TO 2:30 P.M.**

**RESOLUTION BOOK NO. 35 - PAGE 198**

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Smith moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. PLANNING & ZONING COMMISSION UPDATE

Mr. Nathaniel Cannady, Chair of the Planning & Zoning Commission, briefed Council on their activities of the past year and goals for the upcoming year.

On behalf of City Council, Mayor Bellamy thanked Mr. Cannady for his leadership and the entire Commission for their dedication.

### B. PUBLIC ART & CULTURAL COMMISSION UPDATE

Mr. Robert Todd, Chair of the Public Art & Cultural Commission, briefed Council on their activities of the past year and goals for the upcoming year. He said that in order to move forward with the amount of work they are accomplishing, they asked for Council's support for a full-time dedicated leadership position.

Mayor Bellamy stressed how the arts have a significant impact on our economy and was confident that the kinds of resources the Commission is eager to see will ultimately come about as the City structures the organization over the next few months.

On behalf of City Council, Mayor Bellamy thanked Mr. Todd for his leadership and the entire Commission for their dedication.

### C. LEGISLATIVE UPDATE

**RESOLUTION NO. 13-48 - RESOLUTION SUPPORTING A WESTERN CRIME LABORATORY**

Deputy City Manager Jeff Richardson highlighted for Council some legislative issues of interest as follows: (1) Asheville transfers (HB 252); (2) maintaining water and sewer fiscal health (SB 207 = HB 238); (3) ongoing good faith negotiations with MSD; (4) communications; (5) continuing to track resolutions (48) passed throughout North Carolina; (6) annexation amendment (HB 79); (7) property tax/de-annexation SB 97); (8) HB 224 Asheville extra-territorial jurisdiction and annexation (Asheville only); (9) HB 150 zoning/design and aesthetic controls; (10) SB 125 public meeting/records law; (11) building inspections/local consistency (HB 120); (12) SB 186 notice publication by counties/cities; (13) western crime lab funds/amend evident laws (SB 3); (14) operation of mopeds (HB 48); and (15) repeal combined motor vehicle registration/tax system (HB 30). Discussion surrounded the different legislative issues.

In response to Councilman Smith and Mayor Bellamy, City Attorney Oast said that he will look into more detail the type of mopeds the law would apply to and report back to Council.

Mayor Bellamy felt we need legislation immediately to help communities deal with synthetic drugs.

City Attorney Oast presented Council and read a resolution supporting a western crime laboratory, which he felt Council might wish to adopt and send to our legislators.

When Mayor Bellamy asked for public comment, no one spoke.

Councilman Bothwell moved for the adoption of Resolution No. 13-48. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 - PAGE 202**

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO AMEND AND ADOPT RULES OF PROCEDURE FOR ASHEVILLE CIVIL SERVICE BOARD**

**RESOLUTION NO. 13-46 - RESOLUTION AMENDING AND ADOPTING RULES OF PROCEDURE FOR ASHEVILLE CIVIL SERVICE BOARD**

Human Resources Director Kelley Dickens said that this is the consideration of a resolution amending and adopting Rules of Procedure for the Civil Service Board to promote efficiency in the classified service. This public hearing was advertised on March 1, 2013.

The Civil Service law has undergone various changes since its inception in the early 1930's, the most recent of which occurred in 2009. The Board's Rules of Procedure have not been updated to reflect the most recent changes in the law.

The proposed recommended Rules of Procedure provides current procedures to guide the Board in conducting meetings and hearings. It includes language from the law outlining the duties and responsibilities of the Board and provides guidance to and direction on procedures as it relates to grievance hearings.

There are minor, clerical revisions which are not summarized, however, below is a summary of the substantive revisions:

1. Rule A. was revised to update the language regarding the most recent amendments to the Civil Service Law. In addition, the Board requested that language be added regarding the authority of the Board to hear grievances and to add that the Board had other powers and duties as authorized by the Civil Service Law.

2. Rule C.3. was revised to include the 2009 amendments to the Civil Service Law designating the City Clerk or his/her designee as the Secretary to the Civil Service Board. In addition, language was added that the minutes should otherwise comply with North Carolina law for minutes of public bodies.

3. Rule E.3. was revised, at the request of the Civil Service Board, to reflect that its meetings, as required by the 2009 amendments to the Civil Service Law, shall be set by the Board adopting a regular meeting schedule of each year. Other revisions were made to Rule E.3 regarding the "other business" item on the agenda to comply with changes to the Civil Service Law.

4. Rule E.4. was revised, at the Board's request, to remove the requirement for holding two work sessions during each calendar year.

5. Rules F.1. and F.2. were revised to remove the inaccurate reference to subsection H.

6. Rule G.3. was revised to confirm that discussion of grievances may occur during a closed session during or following the hearing on the grievance.

7. Rules H.1. and H.2. were revised to comply with amendments to the Civil Service Law in 2009.

8. Rule H.6. was revised to comply with the decorum required for attorneys in North Carolina that they generally remain seated.

9. Rule H.7.b. was revised to include excusing a Board member if bias is shown.

10. Rule H.8.b. was revised to provide that materials and documents will not be submitted to the Civil Service Board until the hearing in order to prevent prehearing bias.

11. Rule H.8.c. was revised to clarify that the doubt raised was about the type of testimony given.

12. Rule H.9. was revised to conform to language of the Civil Service Law.

13. Rule H.10. was revised to conform to language in the Civil Service Law. The Civil Service Law does not address tie votes, but tie votes result in a motion failing and other motions are possible.

She noted one change that was not reflected in the proposed rules sent to Council. Under E.4 - the Board shall have the option of holding two work sessions each calendar year.

The Rules are intended to repeal all other previously adopted rules and regulations of the Board which have not kept pace with the changes in the law.

The proposed Rules of Procedure have been approved by the Civil Service Board members after meetings with City staff and the Board's attorney.

Pros:

- Align the document with the most recent amendments of the Civil Service Law
- Better clarify the Civil Service Board's authority and purpose

Con:

- None

The City's Human Resources Department recommends that City Council approve the resolution amending the Rules of Procedure.

At 6:14 p.m., Mayor Bellamy opened the public hearing, and when no one spoke, she closed the public hearing at 6:14 p.m.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hunt moved for the adoption of Resolution No. 13-46. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 199**

**V. UNFINISHED BUSINESS:**

**A. CONSIDERATION OF BY-LAWS FOR THE ASHEVILLE DOWNTOWN IMPROVEMENT DISTRICT INC.**

Ms. Susan Griffin, Chair of the Asheville Downtown Improvement District Inc. (DID) Board, said that downtown Asheville is dirty and downtown residents want to work in partnership with the City to clean it up. They are bringing a $450,000 gift (in the form of a special tax assessment on themselves) to get the job done. They need the organizational framework to sign contracts with the City and service providers and create a structure that will enable them to transact their business efficiently. The framework is designed in the by-laws which have been unanimously approved by the DID Board. All of this falls within state statute which guarantees the City ultimate financial oversight on anything the DID does. They look forward to keeping downtown the economic driver in this region.

Mr. Rick Jackson, Chair of the DID By-laws Committee, said the starting point of their by-laws is from the by-laws from the DID Board in Durham, North Carolina. The interim DID Board revised the starting point to capture the uniqueness of Asheville. The attempt of the categories of the directors is to be more inclusive in soliciting feedback to the Board. They reduced the size of the Board from 15; made the executive director a non-voting member of the executive committee; and assured that committees cannot make major decisions. Any amendments to the articles or the by-laws are subject to City Council approval, noting out of the 15 member board, five of the directors are appointed by the City Council. Separate from the by-laws, City Council has oversight already in the form of the contract yet to be negotiated between Council and the DID Board, in addition to Council's annual approval of the BID Board's budget. He then outlined the membership of the DID Board: ex-officio voting member - member of Asheville City Council or designee; ex-officio voting member - member of Buncombe County Commission or designee; ex-officio voting member - member of Asheville Downtown Association (as appointed by the Asheville Downtown Association); three major real estate property owners - one appointed by City Council; three small/medium real estate property owners - one appointed by city Council; two residents living within the DID area; one office tenant - appointed by City Council; two members who own or operate a retail business or restaurant; and homeless service provider - appointed by City Council. He asked for Council's approval of the by-laws.

Councilman Hunt said that Council has approved this in concept. In two weeks, Council will approve the budget and setting a tax rate. At the Council's worksession held earlier in the day, Council very much wanted to review their budget, however, due to a mis-communication, the DID Board was not attend to present their budget. Council requested they receive the DID's budget by March 18.

Ms. Griffin said that the DID Board will be meeting on Thursday, March 14, and they will be discussing their budget at that time. They will get the information to City staff to make sure that the format is amenable to City Council.

Councilman Hunt said that the by-laws presented to Council did not include the following amendments, which are acceptable to the DID Board. Those changes are:

1. Article II - 6 (e) - Notwithstanding the foregoing, the Asheville City Council shall appoint one director from Section 2(a), one director from Section 2(b), one director from Section 2(d), and one director from Section 2(f) of this Article IV, to fill a vacancy in the Board of Directors in each such category. At any point in time there shall be no more than one director in each such category who has been appointed by the Asheville City Council.

2. Article VI - 2 - Delegation of Authority - Pursuant to specific resolution, the Board may delegate to a committee any power or powers other than those set forth in subparagraphs (a) through (c) of Section 1 of this Article VI above. As a further limitation on the delegation of its powers, the Board may not delegate its power to recommend or establish a tax rate within the District, approve or enter into contracts for the provision of services within the District, or to determine which services to provide within the District. Persons other than directors may be appointed to any such committees except the Executive Committee, the Nominating Committee, the Finance Committee or other committees with delegated executive powers (e.g., a personnel committee); provided, however, a member of a committee must be an individual member of the Corporation or a Qualified Representative of an Entity which is a member of the Corporation.

3. Article VI - 3 - Executive Committee - The Corporation shall have an Executive Committee whose members shall be comprised of the officers of the Corporation, the Chair of the Board, the immediate past Chair of the Board of Directors, the respective chairpersons of all of the Corporation's other committees, if any, and any other directors appointed by resolution of the Board of Directors. The Chair of the Executive Committee shall be the Chair of the Board of Directors. There shall be no less than five (5) and no more than nine (9) members of the Executive Committee. The Executive Committee shall make recommendations to the Board of Directors. In addition, the Executive Committee shall act for and on behalf of the Board of Directors when the Board is not in session only for matters delegated to the Executive Committee by the Board. As a further limitation on the delegation of its powers, the Board may not delegate its power to recommend or establish a tax rate within the District, approve or enter into contracts for the provision of services within the District, or to determine which services to provide within the District. The Executive Committee shall be accountable to the Board for its actions. The Executive Committee may request that the Executive Director be excused from the Executive Committee meeting from time to time in order to discuss and determine the Executive Director's salary and performance review. The Executive Director shall be a non-voting member of the Executive Committee.

4. Article XIV - These Bylaws may be amended or repealed and new bylaws may be adopted by an affirmative vote of a majority of the directors then in office. The Articles of Incorporation may be amended by an affirmative vote of a majority of the directors then in office. Members of the Corporation (other than in their capacity as directors) are not entitled to vote on any amendments to Bylaws or Articles of Incorporation. Any amendments to the Articles of Incorporation and the Bylaws are subject to the approval of Asheville City Council.

Mr. Jackson said that regarding Article XIV, general Board decisions are going to be quorum and then a majority of those present (example, for 15 members, the quorum is 8 and 4 would be a passing vote). With the exception of by-laws and amendments, that is majority of all directors - for 15 members, quorum of 8 plus City Council approval.

Councilman Hunt appreciated the diligence and work of the DID Board and moved to approve the bylaws of the Asheville Downtown Improvement District Inc., with the four amendments outlined above. This motion was seconded by Councilman Davis.

Councilman Bothwell understood that Council approved the DID Board with two seats for homelessness system experts. He felt it was wrong to turn over tax money to a body whose membership and voting power is determined by wealth.

In response to Mayor Bellamy, Mr. Jackson said that directors may not serve more than 2 consecutive terms, but having skipped one year may again serve as director.

After Mayor Bellamy requested that the DID Board be required to report their activities to City Council on an annual basis, as other boards/commissions do, it was discussed that City Council will have to approve their budget annually; however, it was the consensus of Council that the annual report requirement will be written into their contract, similar to other outside agency contracts.

Mayor Bellamy was disappointed that the DID Board was not at their earlier worksession to discuss their budget, noting that Council will expect a detailed budget (including detail on their exact services to be provided) by March 18. Ms. Griffin said that they were not aware of the earlier worksession as they have been working towards the March 26 Council meeting deadline. She said they would provide the detailed budget to City Council by March 18.

In response to Mayor Bellamy's question about the elimination of the second homelessness service provider on the Board, Mr. Jackson said it wasn't a reflection on the significance of that position as much as it was striking a balance across the rest of the seats. The reduced their membership from 19 to 15 and there was a balance across the categories that they attempted to preserve. The intent of the membership recognizes that we need other non-profits at the table, and the current existing framework is flexible enough to include others even if they don't pay taxes (a nominal or in-kind recognition would be sufficient for a financial contribution for that party to have a seat on the Board). Councilman Davis (ex-officio voting member on the DID Board) also responded that he is also Chair of the Housing & Community Development Committee and can carry that knowledge to the Board. He felt with that with Micheal Wood and Stephanie Swepson-Twitty on the Board, we are reaching a great deal of the homeless service community. He also noted that there will be several opportunities for other service providers on the subcommittees that will be established by the DID Board.

Mayor Bellamy said that there are some renters who are very active in their buildings, who are low income, but they don't pay property taxes. They would like a seat at the table. She hoped that as Council talks about our five appointments that we will keep in mind that there are renters who want to be a part of this conversation.

When Mayor Bellamy questioned if most of the membership has to make a financial contribution to be on the Board, Mr. Jackson said yes. He said that "a minimum of 70% of the Board shall be those who make a financial contribution to the Corporation through the payment of real estate taxes attributable to the DID and the remaining directors shall live or work in the district and be a person who makes a financial contribution to the Corporation, such financial contribution to be defined from time to time by resolution of the Board of Directors."

Councilman Smith thanked everyone for their hard work on this but noted that everyone agrees with the outcomes. He still has some concerns even though he voted to move this forward at the earlier meeting. He really wants to see the budget and what the priorities of the Board will be before he can vote for a tax increase to fund it, and to turn over the administration of that money to an appointed board. He did not want to vote in favor of the by-laws and then see the budget and not be able to support it. He did have concern about the homeless service providers but understood what the Board has done about that to allow City Council to address that issue with our appointments. At this point he cannot support the by-laws, without seeing the budget.

In response to Councilman Hunt, City Attorney Oast said that if Council feels that seeing the budget first, before approving the by-laws, is important, then it is appropriate to continue approval of the by-laws.

Councilman Hunt withdrew his motion to approve the by-laws for the Asheville Downtown Improvement District Inc., and Councilman Davis withdrew his second.

Councilman Davis moved to continue consideration of approval of the by-laws for the Asheville Downtown Improvement District Inc. to March 26, 2013. This motion was seconded by Councilman Smith and carried unanimously.

## VI. NEW BUSINESS:

### A. ORDINANCE NO. 4170 - ORDINANCE AMENDING ARTICLE III OF THE CITY CODE OF ORDINANCES RELATING TO MASSAGE AND BODYWORK THERAPY REGULATIONS

Assistant City Attorney Kelly Whitlock said that this is the consideration of amendments to Article III of the City's Code of Ordinance relating to massage and bodywork therapy regulations.

The Massage and Bodywork Therapy Practice Act (N.C.G.S. §§90-621 et seq) was enacted by the North Carolina General Assembly in 1998 in which licensure became mandatory for all practicing massage and bodywork therapists. The North Carolina Board of Massage and Bodywork Therapy ("Board") is the agency responsible for implementing and administering the regulatory program for individual therapists and for schools of massage and bodywork therapy. The Board is authorized to evaluate the qualifications and requirements of applicants for licensure and enforce the laws and rules related to the practice, which includes disciplinary action. Pursuant to the Act, cities can regulate massage and bodywork therapists as long as cities do not impose regulations that are inconsistent with state law.

In addition to obtaining a license to practice, massage and bodywork therapists are required to obtain a statewide privilege license pursuant to N.C.G.S. §105-41. Under this law, cities may not levy an additional privilege license tax on professionals who are required to have this statewide privilege license.

The City's current massage therapy ordinance was first enacted in 1995 and requires massage and bodywork therapists and establishments to apply for and obtain a City privilege license. It further requires licensees to file with the Chief of Police the names, addresses, and numbers of all employees and to maintain records of the names and addresses of the persons receiving massages at such establishments which are subject to inspection by the Chief of Police. The current ordinance also consists of the following prohibitions: 1) massages before 8:00 am or after 10:00 pm; 2) massages to any person under the age of 21 except if accompanied by a parent or guardian or upon written order of a physician; 3) the employment of any person under the age of 21 years in the operation of a massage business; and 4) massaging of private parts of

another for hire. The privilege license is subject to revocation or suspension if a violation of the ordinance occurs.

The City's ordinance has not been revised since it was first enacted and revisions to the ordinance are required in order to be consistent with state law. In addition, after thorough review, certain regulations have been deemed unnecessary for effective enforcement and should be updated.

The proposed ordinance consists of the following revisions to be consistent with state law:

1) Revision of definitions section
2) Deletion of City privilege license requirements
3) Revision of the prohibition of employment of minors under the age of 21 in massage therapy establishments to minors under the age of 18.

The proposed ordinance contains the following deletions and revisions for more effective enforcement:

1) Deletion of the requirement that names, addresses and phone numbers of employees in massage therapy establishments must be filed with Chief of Police
2) Deletion of the requirement that massage therapy establishments maintain records of persons receiving massages and subject to inspection by the Chief of Police
3) Revision of the prohibition of hours of operation from 10:00 p.m. to 8:00 a.m. to 11:30 p.m. to 5:00 a.m.
4) Revision to the prohibition of massages to minors under the age of 21 to minors under the age of 18 except if accompanied by a parent or upon written order of a physician

Staff reviewed the massage therapy and bodywork ordinances of 8 North Carolina cities in addition to the City's and found that Asheville's ordinance was one of the most restrictive ordinances among the cities reviewed.

On January 28, 2013, the Public Safety Committee approved the proposed ordinance revisions and requested that staff implement outreach to massage and bodywork therapists and establishments to gather input on the proposed revisions prior to staff's presentation to City Council.

Pursuant to the Public Safety Committee's recommendation, City staff sent a letter explaining the proposed revisions to the ordinance with links to a survey and the current and revised ordinances to 417 practitioners using a mailing list provided by the NC Board of Massage and Bodywork Therapy. 49 respondents completed the online survey.

Responses suggest that the majority of the respondents favor all the suggested revisions to some degree. Four respondents suggested defining hours of operation from 7 a.m. to 10-11:00 p.m. Six respondents commented that there should be no restrictions placed on the hours of operation. One respondent stated that the restriction on the hours of operation furthered the perception that massage was an illicit practice, while two other comments stated that limiting the hours of operation was necessary to discourage illegal behavior. One respondent commented that the prohibition of massages to minors under the age of 18, except if accompanied by a parent or upon written order of a physician, was not necessary.

| | Survey Response | | |
|---|---|---|---|
| Revision to Ordinance | Favor to some degree | Neither favor nor oppose | Oppose to some degree |
| Deletion of requirement to file clients' names, | | | 12% |

280

| | | | |
|---|---|---|---|
| addresses and phone numbers with Police Chief | 84% | 4% | strongly opposed |
| Deletion of requirement to maintain records on clients for inspection by Police Chief | 80% | 4% | 16% |
| Revision of prohibition on hours of operation to between 11:30 p.m. and 5 a.m. | 53% | 18% | 29% |
| Revision of prohibition of massage to minors under the age of 18 except if accompanied by a parent or upon written order of a physician | 90% | 6% | 4% |

This action complies with City Council's Strategic Operating Plan in the Safe Goal. Goal I: Make Asheville one of the safest cities in America based on approved metrics for similarly sized cities.

Pros:

- Proposed ordinance is consistent with state law.
- Less restrictions on ability of massage therapists and establishments to operate their business.
- Hours of operation expanded for massage therapists and establishments.
- Persons of the age of 18, 19 or 20 are permitted to receive massages without a doctor's order or parental accompaniment.
- Persons of the age of 18, 19 or 20 are permitted to work in a massage therapy and bodywork establishment.

Cons:

- Although hours of operation are expanded, a restriction remains.
- Minors under the age of 18 are restricted from receiving a massage unless accompanied by a parent or upon written order of a physician.

If Council approves the proposed changes, adoption of the ordinance is recommended.

Ms. Kimberly Williams, Director of the N.C. School of Advanced Bodywork, explained how massage therapy is paramount to health care and supported the amendments.

Brother Christopher Chiaronmonte felt the hours should be no limitation on the number of hours someone can get a massage, as some people do not work regular hours.

One of the owners of Massage Envy urged City Council to adopt the proposed changes.

A bodywork therapist and health practitioner felt the entire article needed to be revised, and offered her services.

In response to Councilman Pelly, Ms. Whitlock said that the definitions in proposed ordinance are in line with the State law.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith moved for the adoption of Ordinance No. 4170. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 162**

**B. RESOLUTION NO. 13-47 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE CITY BOARD OF EDUCATION**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Asheville City Board of Education.

The terms of Gene Bell, Al Whitesides and Peggy Dalman expire on April 1, 2013. Mr. Bell and Mr. Whitesides are not eligible for reappointment.

The following individuals have applied for the vacancy: Annette McClure, Leah Ferguson, Matthew Buys, Drew Shelfer, Cheri Torres, Patricia Griffin, Kathryn Liss, Andrew Cross, Dee Williams, Ann Sharky Ward, James Lee, John Brigham and George Sieburg.

It was the consensus of City Council to interview Ms. Dalman, Ms. Ferguson, Mr. Buys, Ms. Torres, Mr. Lee and Mr. Sieburg. Ms. Dalman and Mr. Buys were not able to attend the interview sessions and contacted Council members individually for phone interviews. The other interviews took place earlier in the day.

Council spoke highly of all the very qualified candidates and after noting it was a hard decision, Peggy Dalman received 7 votes, Leah Ferguson received 5 votes, Matt Buys received 7 votes, Cherri Torres received no votes, James Lee received 1 vote, and George Sieburg received 1 vote.

Councilman Hunt moved (1) to reappoint Peggy Dalman as a member of the Asheville City Board of Education, to serve an additional four year term, term to expire April 1, 2017; and (2) appoint Leah Ferguson and Matt Buys, as members of the Asheville City Board of Education, to each serve a four year term respectively, terms to begin April 1, 2013, and expire April 1, 2017. All terms are until their successors have been appointed. This motion was seconded by Councilman Smith and carried unanimously.

City Council thanked the Asheville City School Foundation for their outreach for candidates. City Council will work with the School Board to help achieve the School Board's goals.

**RESOLUTION BOOK NO. 35 – PAGE 200**

**C. REVIEW OF RECRUITMENT PLAN FOR CITY ATTORNEY**

Human Resources Director Kelley Dickens said that the following is a proposed recruitment and selection plan prepared by Human Resources staff for the position of City Attorney.

Given the announcement of the retirement of the current City Attorney, Human Resources staff has prepared the following proposed recruitment and selection plan for Council's consideration and review. Human Resources would recommend that the personnel committee work to narrow the applicant pool and work with staff to ensure the selection process meets the Council expectation.

*Proposed Recruitment and Selection Timeline*

| | |
|---|---|
| March 14: | Begin Recruitment for City Attorney position. |
| April 15: | Tentative date for Application Review Process to begin |
| April 16 – 22: | Applications reviewed by committee to narrow applicant pool |
| April 23 – 25 | Top 6-8 candidates contacted by staff for first component of selection process |
| May 1– 3: | First component reviewed by panel/committee to narrow applicant pool further |
| May 3 – 6: | Identify top candidates for an on-site assessment process |

| | |
|---|---|
| May 8 – 10: | Staff contacts candidates for the on-site selection process |
| May 20 – 24: | Onsite assessment process with top candidates |
| May 28 – 31: | Assessment process results reviewed |
| June 1 – 7: | Reference checks, conditional offer, pre-employment screening completed |
| June 10 – 14: | Final Offer extended and candidate gives notice to current employer. |

A targeted start date for a newly appointed City Attorney would be most likely between the end of July and the end of August, given that top candidate may need to give a notice of 30 to 60 days if currently employed.

The proposed timeline above is an aggressive schedule and could be impacted by a variety of factors throughout the process. Staff will work with City Council as necessary to coordinate schedules and manage the process and timeline. During the first phase of the process, it is recommended that staff work with the personnel committee on establishing the selection process components and details.

Given the proposed timeline above, there will be a need for City Council to appoint an Interim City Attorney at some point. While it is possible a new City Attorney may be identified by the end of June it is not expected they will begin work until after the current attorney's retirement. However, due to the fact that the current City Attorney will be working through the end of June, Council has time to consider the options and an appropriate process and timeline to appoint an interim.

*Recruitment Efforts*
Staff will utilize a variety of outlets in an effort to recruit a strong pool of candidates. The information below provides an overview of the planned efforts.

Standard websites and efforts that are used in other recruitment efforts:
- City of Asheville Website
- Governmentjobs.com
- Careerbuilder.com
- Localjobs.com
- theurbannews.com
- City of Asheville Job Opportunities Diversity Network Email List

Professional Organizations:
- North Carolina League of Municipalities
- NC Association of County Commissioners
- Lawyer's weekly (NC professional magazine)
- UNC School of Government related listservs (Local Govt Lawyers, Managers, etc.)
- North Carolina Bar Association
- Linkedin posting for associations listed who have an account

Universities and Diversity Organizations:
- NC Association of Women's Attorneys
- NC Association of Black Lawyers
- NC Law School Alumni Associations

While there will be expenses associated with the recruitment and selection process, these can be covered by the current departmental budget allocations.

City staff recommends City Council authorize staff to begin the recruitment process.

In response to Mayor Bellamy about the length of service requirement between 6-9 years, City Attorney Oast said anything less than five years is not something Council should

consider, but also Council would not want to prohibit a candidate that has more than nine years experience from applying.

In response to Mayor Bellamy, Ms. Dickens said that they will review the job classification specifications to make sure that it reflects that the candidates understand North Carolina law. In addition, she will provide benchmark compensation data so we can be competitive in our search.

In response to Councilman Pelly, Ms. Dickens said that per Council direction, staff will be proceeding with handling this recruitment effort.

When Mayor Bellamy asked about next steps, Ms. Dickens recommended the Human Resources staff screen the applications for minimum qualifications (deadline of April 15) and then work with the City Council Personnel Committee to narrow them down and they can present as many as the Personnel Committee wishes to the full Council. Or, Human Resources staff could narrow the candidates to the top five and they be presented to City Council for review.

Mayor Bellamy said the Personnel Committee is established (herself, Vice-Mayor Manheimer and Councilman Smith) and a meeting will be scheduled soon to talk about how many candidates should be presented to the full Council for review.

It was the consensus of Council to direct City staff to begin the city attorney recruitment process as outlined above.

**D. BOARDS & COMMISSIONS**

Regarding the Greater Asheville Regional Airport Authority, the following individuals applied for the vacancy: Albert Anderson, Bradley Cain, Julian Jones, Aixa Wilson, Ken Hawkins, Charles Larrick, John Hayler and George Lycan. It was the consensus of the Boards & Commissions Committee and City Council to re-advertise.

Regarding the Citizens-Police Advisory Committee, the following individuals have applied for the vacancy: Karl Katterjohn, Fred Cooke and Scott Steele. Because the vacancy is for a south representative and no one from the south applied, it was the consensus of Council to re-advertise for a south representative.

Regarding the Neighborhood Advisory Committee, the following individuals with the 28803 or 28704 zip code have applied for the vacancy: Teddy Jordan, Aixa Wilson and Spencer Hardaway. It was the consensus of the Boards & Commissions Committee and City Council to re-advertise.

**RESOLUTION NO. 13-48 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Asheville-Buncombe Community Relations Council.

Ms. Itiyopia Ewart resigned on January 13, 1013, thus leaving an unexpired term until December 31, 2013.

The following individuals have applied for the vacancy: Melissa Blazen, George Pfeiffer, Christine Longoria, Jesse Andrews, Sandra Houts and Tracy Miles.

It was the consensus of the Boards & Commissions Committee (and of the Community Relations Council) to appoint Tracy Miles.

Councilman Smith moved to appoint Tracy Miles as a member of the Asheville-Buncombe Community Relations Council, to serve the unexpired term of Ms. Ewart, term to expire December 31, 2013, or until her successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 201**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Councilman Davis thanked everyone involved in Asheville's hosting the Southern Conference March 8-11 at the U.S. Cellular Center and at UNC-Asheville.

Brother Christopher Chiaronmonte spoke about the homeless issue in Asheville.

Mr. Timothy Sadler spoke about the lack of two homelessness service providers on the DID Board. Mayor Bellamy requested City Clerk Burleson provide Council and Mr. Sadler with a copy of the minutes where that discussion occurred.

Mr. Fred English asked for Council's assistance in repairing Pressley Road from sewer line work. Mayor Bellamy requested City Manager Jackson to contact the Metropolitan Sewerage District and advise them of the concern.

**Closed Session**

At 7:52 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: City of Asheville; Mayor Terry M. Bellamy; Cecil Bothwell; Jan B. Davis; Marc W. Hunt; Christopher A. Pelly; Gordon D. Smith; W&K Hotels, LLC d/b/a Four Points by Sheraton; Hospitality Lodging Investors, II, LP, d/b/a Hotel Indigo; and Nesbitt Asheville Venture, LLC d/b/a The Renaissance Hotel. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 8:21 p.m., Councilman Smith moved to come out of closed session. This motion was seconded by Councilman Hunt and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 8:21 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – March 26, 2013- 2:30 p.m.

Regular Meeting

Present: Vice-Mayor Esther E. Manheimer, Presiding (recused from meeting at 5:01 p.m.); Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Deputy City Manager Jeffrey Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Terry M. Bellamy and Councilman Gordon D. Smith

**PLEDGE OF ALLEGIANCE**

Vice-Mayor Manheimer led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Hunt gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING APRIL 6, 2013, AS "TARTAN DAY" IN THE CITY OF ASHEVILLE**

Councilman Bothwell read the proclamation proclaiming April 6, 2013, as "Tartan Day" in the City of Asheville. He presented the proclamation to the President of the Local Chapter of the New World Celts, who briefed City Council on some activities taking place during the day.

**II. CONSENT AGENDA:**

It was the consensus of Council to add a resolution to the Consent Agenda to change the time of the April 3, 2013, budget worksession from 3:00 p.m. to 2:00 p.m. in the First Floor North Conference Room of City Hall. It was noted that public comment will be allowed at the end of the worksession (specifically to address some parks and recreation issues) emphasizing that this is an opportunity for the public to give input during the budget deliberations, but that a formal public hearing on the budget will take place on May 14, 2013.

**A. APPROVAL OF THE MINUTES OF THE RETREAT HELD ON MARCH 11, 2013, AND THE FORMAL MEETING HELD ON MARCH 12, 2013**

**B. RESOLUTION NO. 13-50 - RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY PROPERTY OFF SUNRISE DRIVE TO MICHAEL FALKNOR**

Summary: The consideration of a resolution authorizing the City Manager to convey real property off Sunrise Drive to Michael Falknor.

The City of Asheville owns surplus real property located on Sunrise Drive, measuring approximately 0.26 acres (PIN 9638-76-2779-00000). The lot is zoned RM8 and is in good proximity to West Asheville and the River Arts District. The topography of the lot is gently sloping and appears to be suitable for residential development. However, this lot has been held by the City as surplus property for quite some time, due to the fact that there is no deeded access to sewer infrastructure for the property.

At this time, a bid has been received from an adjoining property owner, Michael Falknor, in the amount of $35,000 for the purchase of this parcel. Mr. Falknor will be able to provide

sewer access to this lot via the property he currently owns, and intends to develop a single family home on the property. The bid at $35,000 is considered fair market value based on a 2013 appraisal performed by Dry Ridge Appraisal Service, LLC. An advertisement for upset bids was published in the paper on February 15, 2013. Within the 10 day notice period, no upset bids were received for the property.

The Parks, Recreation and Cultural Arts Department has verified that this parcel does not lie within an existing or proposed greenway trail according to the Greenway Master Plan and therefore is not an advantageous property to be held for use by the City of Asheville.

This action complies with the City Council Strategic Operating Plan by supporting Fiscal Responsibility, through disposition of surplus real property at market value.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Con:

- There is no negative impact.

The proceeds from the sale of this parcel will benefit the General Fund and will be designated for future economic and community development projects,

Staff recommends City Council adopt the resolution to convey real property off Sunrise Drive to Michael Falknor.

**RESOLUTION BOOK NO. 35 - PAGE 203**

**C. RESOLUTION NO. 13-51 - RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY REAL PROPERTY OFF JEFFERSON DRIVE TO REBECCA AND LEE LANCE**

Summary: The consideration of a resolution authorizing the City Manager to convey real property off Jefferson Drive to Rebecca and Lee Lance.

The City of Asheville owns property at 360 West Haywood Street that is currently utilized as the Transit Maintenance Center. An adjoining property owner has approached the City of Asheville with a request to purchase a 0.11 acre portion (PIN 9648-08-1684-00000) of the City property in order to resolve an access issue at their home. Rebecca and Lee Lance own property that fronts on Jefferson Drive and shares a rear property boundary with the Transit Maintenance Center. Due to the narrow shape of their lot and the relative steepness of the frontage along Jefferson, the only current access to the home is through a shared driveway with the neighboring property to the south. Mr. and Mrs. Lance seek to purchase this 0.11 acre portion of the Transit Maintenance property to develop a permanent driveway as well as construct additional related improvements (e.g. garage, garden shed, etc.)

Staff has reviewed this request on site at the Transit Maintenance Center, with the conclusion that releasing a 0.11 acre tract from the total 3.5 acre property does not impact the current or future operations at that site. Further, the disposition of this 0.11 acre lot will not inhibit a future land use change at the site, if the Transit Maintenance Center were to be redeveloped to a higher and better use. A chain link fence is located within the area of interest, and it will be the responsibility of Mr. and Mrs. Lance to relocate the chain link fence if the sale is approved.

Per the NC General Statutes, Mr. and Mrs. Lance submitted a bid to purchase the parcel in the amount of $25,000. The bid at $25,000 is considered fair market value based on a 2013 appraisal performed by Dry Ridge Appraisal Service, LLC. An advertisement for upset bids was published in the paper on February 15, 2013. Within the 10 day notice period, no upset bids were received for the property.

This action complies with the City Council Strategic Operating Plan by supporting Fiscal Responsibility, through disposition of real property at market value.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Con:

- There is no negative impact.

The proceeds from the sale of this parcel will benefit the General Fund and will be designated for future economic and community development projects,

City staff recommends City Council adopt the resolution to convey real property off Jefferson Drive to Rebecca and Lee Lance.

**RESOLUTION BOOK NO. 35 - PAGE 204**

**D. RESOLUTION NO. 13-52 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE A SEALED BID OF THREE PARCELS OF CITY-OWNED PROPERTY KNOWN AS (1) SHORT STREET LOT; (2) S. BEAUMONT STREET LOT; AND (3) HANSEL AVENUE LOT**

Summary: The consideration of a resolution directing the City Clerk to advertise a sealed bid sale of three parcels of City owned property, known as the (1) Short Street lot, (2) S. Beaumont lot, and (3) Hansel Avenue lot.

The City of Asheville owns three properties that are currently designated as surplus, residential, vacant lots – the Short Street lot (0.12 acres, PIN 9649-11-8703-00000), S. Beaumont lot (0.204 acre, PIN 9648-69-7439-00000) and Hansel Avenue lot (0.69 acres, – PINs 9638-49-6279-00000 and 9638-49-6460-00000). Over the past several weeks, there has been an increase in interest from local buyers in these parcels. To respond to this interest, staff is seeking authorization to commence a sealed bid process, as outlined below:

1. Upon approval of this resolution, the City Clerk will publish a notice of sealed bid sale in the Asheville Citizen-Times, identifying the parcels available for sale and all terms and conditions of the sale.
2. During the thirty day notice period, City staff will actively market the parcels with the assistance of the local realtor's network and the regional Multiple Listing Service (MLS).
3. On May 3rd at 2 p.m. on the fifth floor of City Hall, City staff will host a public bid opening, and will review all sealed bids received for the parcels.
4. Staff will present highest bids for City Council authorization on May 14th, 2013, with Council reserving the right to reject any and all bids.
5. Potential closing date(s) – July 1, 2013.

Staff is seeking to utilize the sealed bid process in effort to benefit from the thirty day marketing period, as well as to ensure a deliberate process for all persons that have shown

interest in the parcels for sale. For more information on the parcels and conditions of sale, please refer to the notes contained on each parcel map.

This action complies with the City Council Strategic Operating Plan by supporting Fiscal Responsibility, through disposition of real property at market value.

Pros:

- The potential sale will be at fair market value as established by the sealed bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Con:

- There is no negative impact.

The proceeds from the sale of the S. Beaumont and Short Street parcels will benefit the Community Development Block Grant fund. The sale of the Hansel Avenue parcel will benefit the General Fund and will be designated for future economic and community development projects.

City staff recommends City Council adopt the resolution directing the City Clerk to advertise a sealed bid sale of three parcels of City owned property, known as (1) Short Street lot, (2) S. Beaumont Lot, and (3) Hansel Avenue lot.

**RESOLUTION BOOK NO. 35 - PAGE 205**

**E. RESOLUTION NO. 13-53 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES WITHIN THE TERRITORIAL LIMITS OF THE CITY OF ASHEVILLE**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Asheville Humane Society (AHS) for animal shelter services within the territorial limits of the City of Asheville.

Buncombe County has required the City of Asheville to pay for animal shelter services through the Asheville Humane Society (AHS) who contracts with Buncombe County to run the animal shelter. The cost for the animal shelter services to the City of Asheville for FY 2012-2013 will be $19,167 per month for a FY year total of $230,004. This represents an increase from the cost of last years' service and is already included in the Asheville Police Department's 2012 - 2013 budget. The AHS contract amount has remained relatively unchanged over the past 10 years, experiencing only nominal increases:

- 2002 - 2008: $121,000.00
- 2009: $127,050.00
- 2010-2011: $133,402.56
- 2012: $230,004.00

Enhancements in the manner in which AHS is able to track the number of animals that are received by them from the City and analyzing the cost of housing / caring for the animals has allowed AHS to develop an empirical formula that drives this current contract increase.

The Public Safety Committee will be reviewing this item at their Monday, March 25, meeting.

This action complies with the City Council's Strategic Operating Plan in the focus area of Safe, by actively enforcing animal control laws.

Pro:

- The City continues to have a safe and organized manner in which to care for impounded animals without incurring the costs of construction and operation of an animal shelter.

Con:

- Ongoing general fund expenditure that will likely continue to increase as the animal shelter operating costs increase.

The current contract amount represents an increase of $96,601.44 over the prior contract amount. As noted above, funding for the contract is already included in the FY 2012-13 Police Department operating budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Asheville Humane Society for Animal Shelter Services for the term of July 1, 2012, through June 30, 2013.

**RESOLUTION BOOK NO. 35 - PAGE 206**

**F. ORDINANCE NO. 4171 - BUDGET AMENDMENT FROM THE U.S. DEPT. OF JUSTICE FOR REIMBURSEMENT FOR OVERTIME EXPENSES RELATED TO ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCE PARTICIPATION**

Summary: The consideration of a budget amendment, in the amount of $10,000, from the US Department of Justice (DOJ), for reimbursement for overtime expenses related to Organized Crime Drug Enforcement Task Force (OCDETF) participation.

The Asheville Police Department is an active member of the Drug Enforcement Administration (DEA) Task Force. As part of the agreement in joining, officers are authorized to work overtime which will be reimbursed by the Federal Government. The funds received vary depending upon the length and involvement in operations. In order to continue Asheville Police Department (APD) participation and long term involvement with operations, it is imperative that we continue to receive such overtime reimbursement. Based on the current operation APD has been allocated $10,000 by the US Department of Justice (DOJ) to apply toward OCDETF overtime expenses.

This action complies with the City Council Strategic Operating Plan in Fiscal Responsibility in that we are using Federal Funds to reimburse for overtime that would otherwise come from APD's Operating Budget and, 2) Safe City in that participating in the DEA Task Force we are able to conduct long term operations that remove drug suppliers from our community, thus making Asheville a safer and more desirable community to live.

Pro:

- Provides a non-City revenue source to cover Police Department overtime expenses incurred during participation in the Drug Enforcement Administration (DEA) Task Force.

Con:

- None noted

As noted above, this grant provides a non-City funding source for a portion of APD's General Fund overtime expenses.

City staff recommends City Council adopt a budget amendment, in the amount of $10,000, to accept the US DOJ funds to offset overtime expenses for APD officers involved in OCDETF operations.

**ORDINANCE BOOK NO. 28 - PAGE 165**

**G. RESOLUTION NO. 13-54 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE U.S. CONFERENCE OF MAYOR / PURDUE PHARMA PRESCRIPTION DRUG ABUSE AWARENESS RECOGNITION PROGRAM**

**ORDINANCE NO. 4172 - BUDGET AMENDMENT FOR THE PURDUE PHARMA PRESCRIPTION DRUG ABUSE AWARENESS RECOGNITION PROGRAM**

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds from the U.S. Conference of Mayors / Purdue Pharma Prescription Drug Awareness Recognition Program in the amount of $5,000; and the associated budget amendment in the amount of $5,000 to budget the grant funds.

The City of Asheville has been awarded a grant from the U.S. Conference of Mayors / Purdue Pharma Prescription Drug Awareness Recognition Program in the amount of $5,000. The City of Asheville was awarded 2nd Place in the Small City category. This grant will allow the Asheville Police Department (APD) to enhance its strong collaborative efforts and community partnerships toward realizing the goal of a Drug Free Asheville and Buncombe County as part of the Partnership for Substance Free Youth in Buncombe.

The primary target population of this effort to eliminate the use of illegal or non-prescribed drugs is school aged children throughout Asheville and Buncombe County. The APD currently partners with NC Alcohol Law Enforcement, ARP (Addiction Recovery Prevention), Asheville City Schools, Asheville Radio Group, Boys and Girls Club of Buncombe County, Buncombe County Department of Health, Buncombe County DSS, Buncombe County Schools, Buncombe County Sheriff's Office, Clear Channel Radio Group, NC Department of Juvenile Justice, Ingles Markets, Mission Hospital System and private individuals representing students and parents.

This action conforms to the City Council's Strategic Operating Plan under Fiscal Responsibility and Safe by using grant funds in support of a collaborative approach to eliminate illegal and non-prescribed drug abuse and raise prescription drug awareness in the community.

Pro:

- Grant funds will further the collaborative prescription drug awareness initiatives without impacting the City general fund.

Con:

- None

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to enter into an agreement with the U.S. Conference of Mayors / Purdue Pharma Prescription Drug Abuse Awareness Recognition Program for the grant monies in the amount of $5,000; and (2) the associated budget amendment, in the amount of $5,000 to budget the grant funds.

**RESOLUTION BOOK NO. 35 - PAGE 207**
**ORDINANCE BOOK NO. 28 - PAGE 167**

**H. RESOLUTION NO. 13-55 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT DEMOCRATIC NATIONAL CONVENTION**

**EQUIPMENT DONATED TO THE ASHEVILLE POLICE DEPARTMENT BY THE CITY OF CHARLOTTE**

Summary: The consideration of a resolution authorizing the City Manager to accept Democratic National Convention (DNC) equipment donated to the Asheville Police Department by the City of Charlotte.

The Asheville Police Department (APD) sent 14 officers to assist the City of Charlotte Police Department during the September, 2012 Democratic National Convention (DNC). During the 7 day assignment, 8 bicycle officers assisted with crowd control and 6 officers assisted with dignitary security. The participating APD officers were issued specialized equipment to include;

- Crowd control helmets - 6
- Police bicycles equipped with lights and soft luggage - 8
- Bicycle racks - 8
- Bicycle helmets - 8
- Bicycle uniforms - 16
- Protective glove sets - 8
- Hydration packs - 8
- Protective shin guard and elbow guard sets - 8

The donated equipment has a total value of $14,444.04. This equipment was purchased by the City of Charlotte with a Bureau of Justice Assistance grant and Charlotte City Council has since been authorized to donate the equipment to law enforcement agencies that supported the City of Charlotte during the DNC.

This action complies with City Council's Strategic Operating Plan in the Focus Areas – Fiscal Responsibility and Safe.

Pros:

- Acceptance of donated equipment will increase the effectiveness of the APD bicycle patrol unit and crowd control team.
- Acceptance of donated equipment will reduce the fiscal impact of equipping APD bicycle patrol and crowd control officers.

Con:

- None.

City staff recommends City Council approve a resolution authorizing the City Manager to accept DNC equipment donated by the City of Charlotte for APD.

**RESOLUTION BOOK NO. 35 - PAGE 208**

**I. RESOLUTION NO. 13-56 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH RENAISSANCE PLANNING GROUP TO DEVELOP A TRANSPORTATION NETWORK PLAN FOR THE EAST OF THE RIVERWAY AREA**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Renaissance Planning Group in the amount of $100,000 to develop a transportation network plan for the East of the Riverway area, and authorizing potential expenditure of a contingency of up to $10,000 for other necessary expenditures for the project.

The transportation network plan is a part of the East of the Riverway Sustainable Multi-Modal Neighborhood Program, supported by the city's Transportation Investment Generating Economic Recovery (TIGER II) planning grant from the US Department of Transportation. The

purpose of the plan is to help further community goals and improve transportation facilities and services by:

- Basing transportation planning on existing and future land use, existing comprehensive plans, and stakeholder input
- Improving the transportation of people and goods using a multi-modal approach
- Improving connectivity to, from and within the area
- Planning a safe, efficient, accessible, and cost-effective transportation system
- Considering environmental impacts, including protecting and improving air quality
- Helping strengthen existing neighborhoods, reduce vehicle miles traveled, and connecting people with jobs, housing and services.

Outcomes of the network plan include a prioritized list of projects and programs to implement the vision for the area, and an assessment of the costs and benefits of the primary projects recommended in the plan.

This action complies with the City Council Strategic Operating Plan Multimodal Transportation Goal by clearly developing a long-term capital improvement funding plan for transportation in the East of the Riverway area, and also with the city's Job Growth and Community Development goals by supporting the city's Sustainable Community Initiative and continuing to rejuvenate the riverfront area.

Pros:

- Provides a prioritized list of projects with cost and cost-benefit information
- Develops a transportation network plan that is linked to land use
- Will enhance multi-modal transportation in the community
- Compliments the recent improvements made by the City and private sector in these neighborhoods
- Engages community members in the process
- Complements other multi-modal transportation planning efforts in the community

Con:

- None

The transportation network plan is a part of the East of the Riverway Sustainable Multi-Modal Neighborhood Program, supported by the city's Transportation Investment Generating Economic Recovery (TIGER II) planning grant from the US Department of Transportation. The amount of TIGER II funds allocated to the project is $100.000. City staff will contribute in-kind time as necessary. Sufficient matching funds have been allocated from other TIGER II project elements to make a cash match unnecessary. An additional $10,000 in TIGER II funds are conditionally allocated as a contingency. There is no financial impact to the General Fund. Project recommendations from this plan will be considered in future capital improvement programs.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Renaissance Planning Group in the amount of $100,000, and authorizes expenditure of an additional $10,000 for contingency, as needed.

**RESOLUTION BOOK NO. 35 - PAGE 209**

**J. RESOLUTION NO. 13-57 - RESOLUTION SUPPORTING THE VISION AND MISSION OF THE NEIGHBORHOOD ADVISORY COMMITTEE**

Summary: The consideration of a resolution supporting the Mission and Vision of the Neighborhood Advisory Committee (herein "NAC").

On April 24, 2012, Council adopted a resolution establishing the NAC and outlining in a general manner the NAC's structure, powers and duties. Council also directed the NAC to report to Council within 180 days on how the NAC proposes to fulfill its functions. That report was delivered to Council on February 26, 2013. Council received the report, along with Mayor Bellamy's suggestion that the NAC help get the information out to the neighborhoods about the City's master plans. The NAC agreed to incorporate the Mayor's suggestion into their 2013 goals. At that meeting, Council also directed the preparation of a resolution endorsing the NAC's Mission and Vision.

**RESOLUTION BOOK NO. 35 - PAGE 210**

**K. RESOLUTION NO. 13-59 - RESOLUTION AMENDING THE CITY COUNCIL MEETING AGENDA TO CHANGE THE TIME OF THE CITY COUNCIL BUDGET WORKSESSION ON APRIL 3, 2013, FROM 3:00 P.M. TO 2:00 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF CITY HALL**

**RESOLUTION BOOK NO. 35 - PAGE 216**

Vice-Mayor Manheimer asked for public comments on any item on the Consent Agenda, but received none.

Vice-Mayor Manheimer said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Bothwell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Hunt and carried unanimously.

## III. PRESENTATIONS & REPORTS:

**A. PROPOSED IMPROVEMENTS TO I-26 FROM US 25 IN HENDERSON COUNTY TO I-40 INTERCHANGE**

Mr. Undrea Major, Project Engineer representing the N. C. Dept. of Transportation briefed Council on the proposed amendments to I-26 from US 25 in Henderson County to the I-40 interchange. He said the approximate length of the project is 22.2 miles (13.6 in Henderson County and and 8.6 in Buncombe County). The purpose is to make improvements to meet the existing and future travel demands and relieve current and projected congestion along the I-26 corridor. He then showed alternatives taking into account the challenges of community impacts, aviation issues, public facilities, and cultural resources. Their public involvement initiatives include visualization photos, citizens' informational workshops, and the merger meeting process. He then reviewed the project timeline with construction beginning in Fiscal Year 2020. He said that even though they would like to have correspondence by March 31, they will continue to take written communication through the duration of the project.

Mr. Major then responded to various questions from Council, some being, but are not limited to: how does this process address the concerns raised several years ago regarding an insufficient environmental review process; and will the widening of I-26 require replacing the Blue Ridge Parkway Bridge, and if so, what does that do to the timeframe.

In response to Councilman Bothwell, Mr. Major explained how the I-26 connector project is moving on a parallel track with this project.

## B. 2002 MILLS RIVER WATERSHED STRATEGIC DOCUMENT

Director of Water Resources Steve Shoaf said that the Water Resources Department contracted with McGill Associates to review the 2002 Mills River Watershed Management Strategy document and provide an assessment based on changes in the status of the watershed and supporting information. The report provided by McGill Associates updates the 2002 document.

The North Carolina Clean Water Management Trust Fund awarded a grant to the Mills River Partnership in August 1999. In addition to several projects targeted to improve water quality in the Mills River watershed, the management strategy document ("The Mills River Watershed Management Strategy") was funded. In 2002, the Mills River Partnership Planning Committee and the Land-of-Sky Regional Council released the study. This report covered a description of the watershed area and the activities in the watershed, the results of water quality assessments, and a compilation of management strategies intended to address the nine areas of concern.

The funding for projects within the watershed and to some extent the Mills River Partnership declined after several years of activity following the 2002 report. The Mills River Partnership regrouped about three years ago and began seeking funding to perform some of the tasks identified in the 2002 document. The Partnership approached the City of Asheville, the City of Hendersonville, and the Town of Mills River requesting funding for a variety of projects and administrative costs. Recently, the Partnership was awarded a grant (Section 319 Grant) that requires matching funds, which the Partnership is asking the aforementioned cities to provide.

The City of Asheville and the City of Hendersonville decided to contract with McGill Associates to review the 2002 Mills River Watershed Management Strategy in light of changes in the watershed over the past 10 years. The intent of this review was to assess the conditions within the watershed, identify any agencies dealing with regulatory or financial support, review the available water quality data, and propose areas that the cities may want to consider for future participation.

The City's ongoing interest in watershed management is the reason for this review. Water quality in the upper watershed continues to be excellent and overall water quality indices have improved during the past 10 years. The report recommends that the focus remain on efforts to protect and improve water quality. While recognizing that the Mills River Partnership is the leading non-regulatory body with interest in the condition of the watershed, strong relationships must be forged between non-regulatory and regulatory programs. Funding initiatives should be considered with an understanding of their long-term impact on water quality.

The management strategy review supports the City Council's Strategic Operating Plan by promoting partnerships to enhance water quality and efficient operations.

Pros:

- Opportunity to partner with the City of Hendersonville and the Mills River Partnership to strategically address areas of concern in the Mills River watershed.
- Funding from the City of Hendersonville and the City of Asheville could make some water quality projects feasible for farmers and local landowners.
- Improvements in the watershed could improve drinking water quality.

Cons:

- The City of Asheville Water Resources Department does not want to begin funding outside agencies.
- The City of Asheville Water Resources Department wants to retain control of how the funding is allocated to specific projects.

At present, there is no fiscal impact. The review of the management strategy was approved by prior Council action. Any future expenditures in the Mills River watershed would be subject to review by Water Resources staff and the City of Asheville.

Mr. Forest Westall, representing McGill Associates, said that provided the review of the 2002 Mills River Watershed Management Strategy - Ten Years Later. Using a PowerPoint, he reviewed the points of focus, land use change/conversion, nine priority watershed issues, and general conclusions. The following are the recommendations: (1) place primary focus on the most immediate and critical risks: agricultural nonpoint sources, stormwater management for existing development and erosion and sediment control for non-regulated activities; (2) work within appropriate non-regulatory framework to establish specific water quality improvement projects directed at the highest priority sites; (3) establish regular training/public information opportunities for interested citizen and business and farm owners and personnel; (4) commit appropriate resources, continue planning efforts and work with established organizations to promote and achieve the long term objectives affecting future water quality: managing land conversion; (5) build strong relationships between non-regulatory activities in the watershed and regulatory programs, particularly with local government jurisdictions; (6) recognize and utilize the Mills River Partnership (MRP) as the key non-regulatory mechanism in the watershed to coordinate and promote ongoing watershed management actions; (7) achieve agreement within the MRP membership on the best approach for establishing leadership and direction; (8) establish a consensus strategy within the MRP for the funding and support of the partnership; (9) identify, seek and establish long term funding mechanisms for the MRP; (10) promote continued monitoring efforts sufficient to document water quality changes in the watershed; (11) improve hazardous spill operational programs for the water treatment systems in the watershed. Coordinate activities between both cities in strengthening the response plans for the facilities; and (12) work to establish effective "early warning systems" for rainfall/runoff events that can impact day to day water plant operational activities. Consider the use of automated monitoring sites for stream turbidity at key locations upstream of the lower intakes with real time data availability.

Because there were some questions raised by Councilman Hunt regarding financial support for the MRP, it was the consensus of Council to discuss this at the next Finance Committee meeting.

**C. RECREATION BOARD UPDATE**

Mr. Wayne Wheeler, Chair of the Recreation Board, briefed Council on their activities of the past year and goals for the upcoming year.

On behalf of City Council, Vice-Mayor Manheimer thanked Mr. Wheeler for his leadership and the entire Board for their dedication.

**D. RIVER DISTRICT DESIGN REVIEW COMMITTEE UPDATE**

Mr. Terry Meek, Chair of the River District Design Review Committee, briefed Council on their activities of the past year and goals for the upcoming year.

On behalf of City Council, Vice-Mayor Manheimer thanked Mr. Meek for his leadership and the entire Committee for their dedication.

**E. LEGISLATIVE & WATER UPDATE**

**RESOLUTION NO. 13 -58 - RESOLUTION OPPOSING HOUSE BILL 252 REGARDING ASHEVILLE WATER SYSTEM FUND TRANSFERS**

Deputy City Manager Jeff Richardson highlighted for Council some legislative issues of interest as follows: House Bill 252 - Asheville Transfers; House Bill 224 - Asheville Extraterritorial

Jurisdiction and Annexation (Asheville only); House Bill 79 - Annexation; House Bill 150 - Zoning/Design & Aesthetic Controls; House Bill 120/Senate Bill 108 - Building Inspections/Local Consistency; Senate Bill 363 - Business Tax Reduction and Reform; Senate Bill 394 - Lower Tax Rates for a Stronger North Carolina Economy; Park Authority House DRH30201 -LM-106C - Establish a City/County Parks & Recreation Authority; Senate Bill 3 - Western Crime Lab Funds/Amend Evident Laws; House Bill 48 - Operation of Mopeds; and House Bill 30 - Repeal Combined Motor Vehicle Registration/Tax System.

City Attorney Oast presented Council with a proposed resolution opposing House Bill 252 regarding Asheville Water System Fund transfers, which loss of authorization would have the following consequences: (1) Loss of $1.8 Million/year and $20 Million over the next ten years in the City's capital improvements program; (2) Property tax increase of up to 5% in order to replace lost revenue; (3) Jeopardize completion of the Azalea Road improvement project and the Lake Craig Flood Control Project, both already funded and shovel ready; (4) Eliminate a valuable funding source for much anticipated future economic development, water and transportation projects, such as the River Arts District Transportation Improvement Project (RADTIP) and Merrimon Avenue commercial corridor improvements; and (5) Limit the City's ability to seek grant funds or matching funds for other projects.

Ms. Teddy Jordan supported the resolution opposing House Bill 252.

Vice-Mayor Manheimer noted that we do have some allies across the state that are speaking up on behalf of cities. They encourage cities to pass resolutions if they are opposed to specific legislation.

Vice-Mayor Manheimer said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hunt moved for the adoption of Resolution No. 13-58. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 25 - PAGE 215**

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF THE PROJECT IDENTIFIED AS MYRA VILLAGE LOCATED AT 11 MYRA PLACE FOR A NINE UNIT MULTI-FAMILY DEVELOPMENT, INCLUDING THE COMPLETION OF PARTIALLY-CONSTRUCTED STRUCTURES FROM A PREVIOUS PROJECT, AND A MODIFICATION REQUEST TO ALLOW PARKING WITHIN A PROPERTY LINE BUFFER**

**ORDINANCE NO. 4173 - ORDINANCE TO CONDITIONALLY ZONE THE PROJECT IDENTIFIED AS MYRA VILLAGE LOCATED AT 11 MYRA PLACE**

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone the project identified as Myra Village located at 11 Myra Place, and identified on the Buncombe County tax maps and records as PIN 6918-90-9765, from RS-4 Residential Single-Family Medium Density District to RM-6 Residential Multi-Family Low Density District/ Conditional Zoning, for a nine unit multi-family development, including the completion of partially-constructed structures from a previous project, and a modification request to allow parking within a property line buffer. This public hearing was advertised on March 15 and 22, 2013.

Ms. Bernstein said that the applicant is requesting a Conditional Zoning for one parcel located at 11 Myra Place from RS-4 (Residential Single-Family Medium Density District) to RM-6

(Residential Multi-Family Low Density District) in accordance with Section 7-7-8 of the UDO, for the development of a nine unit residential proposal.

The applicant is proposing a nine-unit multi-family residential development, housed within four structures. Plans propose three duplexes and one triplex containing four two-bedroom and five three-bedroom units. The two duplex structures at either end of the site are currently 90% complete from a previous approval. Plans indicate completion of the development in three phases.

The site will be accessed in three locations. There are two driveways from Myra Place, each accessing a small parking area (10 spaces at the southern lot and eight spaces at the northern lot). Additionally there is a single driveway from Old Haywood Road that provides access to individual drives / garages for the duplex and triplex located in the center of the site. Bike parking is required.

Old Haywood Road is identified as a needed linkage; however, sidewalk construction is not required for a development with less than 10 units. An easement for future construction will be provided. No sidewalks are provided or required along Myra Place. There is a 5-foot wide sidewalk/pathway proposed throughout the interior of the project, connecting the common parking areas to the units.

Landscaping is required for this project and includes a Type A (20') property line buffer against adjacent RS-zoned properties, street buffer, street trees, parking lot and building impact landscaping.

Open space is required for this project, with 15% of the site designated (0.28 acres). Additionally, 30% of the total site is identified as "tree save area."

The applicant is requesting the following standard to be modified, based on existing conditions from the partial construction and previous approvals for the site.

- **Encroachment**: Parking is not permitted within a property line buffer but there is a very small area where the northernmost parking lot encroaches into the Type A buffer. This modification will need to be approved by City Council.

This proposal was approved with conditions by the Technical Review Committee on February 18, 2013. The Planning & Zoning Commission unanimously recommended approval of this project at their meeting on March 6, 2013. No opposition or communication has been received as of the writing of this report.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate**

**vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The proposed use and development of the land is compatible with the natural features and topography of the site. The parcel was graded with the (stalled) construction and this proposal will complete the work at either end of the site and add two buildings between them, more closely resembling the 2008 approval for the location. The landscaping proposed is fitting and compatible with the adjacent residential neighborhood. There are no significant topographic features on the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The proposed residential use is compatible with the surrounding residential neighborhood and should not injure the value of nearby properties. With the underlying RS-4 zoning between 5-8 units would be permitted by right. The proposed zoning, RM-6, is the lowest density multi-family zoning district and would permit 11 residential units. The applicant is only proposing nine units, so this proposal is not significantly outside of the current allowed density. Additionally, completing the construction and closing out a stalled construction site should benefit the neighborhood.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The proposed residential use is consistent with the surrounding neighborhood. Although duplexes and triplex structures are not permitted by-right in the surrounding single-family zoning district, these structures are single-story and will have a similar, lower impact residential profile (with one exception of the existing two-story duplex at the southernmost end of the site adjacent to Highway Business zoning). Additionally, as mentioned in Condition 3, the proposal for nine units is not significantly outside of the current allowed density for the site.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
City-adopted plans and policies encourage infill development and greater density where appropriate. This location has (some) existing infrastructure, is appropriately sited and provides residential options.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
This site is located just off I-240/Patton Avenue, which places the project in an easily accessible location by car and Asheville transit (old rt. 15 – new W3). The project has been reviewed by the Technical Review Committee and has been found to have adequate access to infrastructure.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard.

Pros:

- The proposal is aligned with Council's goals for infill development and additional residential density where appropriate.
- This action will allow for an open, stalled construction site to be completed.

Cons:

- A (small) modification is needed to allow parking within a property line buffer.
- Although not significantly out of scale, the proposed duplex and triplex structures and surface parking are not entirely visually consistent with single-family zoning.

Based on the above findings, staff recommends approval of the conditional zoning request and approval of the modification as requested by the applicant.

Vice-Mayor Manheimer opened the public hearing at 4:01 p.m.

Mr. Joe Ferikes, developer, explained that they are looking forward to completing this foreclosed project, and asked for Council's support of the conditional zoning.

Mr. Alan Ditmore supported the rezoning.

Vice-Mayor Manheimer closed the public hearing at 4:04 p.m.

Vice-Mayor Manheimer said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Bothwell found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4173 to conditionally zone the project identified as Myra Village located at 11 Myra Place from RS-4 Residential Single-Family Medium Density District to RM-6 Residential Multi-Family Low Density District/Conditional Zoning and approval of the modification request to allow parking within a property line buffer, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report: (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (6) The sidewalk easement must be recorded prior to final zoning approval. This motion was seconded by Councilman Pelly and carried unanimously.

**ORDINANCE BOOK NO. 28 - PAGE 169**

**B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING FOR WEIRBRIDGE VILLAGE LOCATED ON HENDERSONVILLE ROAD, LEGACY OAKS PLACE AND RACQUET CLUB ROAD TO ALLOW FOR THE INSTALLATION OF MENU BOARDS ON A COMMERCIAL OUTPARCEL**

Director of Planning & Development Judy Daniel said that this is the consideration of an ordinance to amend the conditional zoning for Weirbridge Village located on Hendersonville Road, Legacy Oaks Place and Racquet Club Road to allow for the installation of menu boards on a commercial outparcel. This public hearing was advertised on March 15 and 22, 2013.

She said that in 2006, conditional zoning approval to Highway Business/Conditional Zoning was granted to property located at the corner of Hendersonville Road and Racquet Club Road. The site plan that was approved with the rezoning presented a mixed use development with commercial outparcels to the east (along Hendersonville Road) and 280 residential dwellings located on the middle and western portions of the property.

Subsequent to that approval (in 2008), the developer of Weirbridge Village returned to City Council with an amendment to the conditional zoning ordinance in the form of a comprehensive signage package. This package addressed the size and height of all signs for both the residential and commercial portions of the property. One item that was not addressed in this package, however, was an allowance for menu boards for drive thru facilities. A drive thru facility is now proposed for one of the outparcels and the conditional zoning ordinance being presented amends the existing sign package to allow for two menu boards (double order stations proposed). The proposed menu boards are 31 square feet in size (single-faced) which is less than is allowed for menu boards in the Unified Development Ordinance (36 square feet). While the UDO does not allow for two menu boards on a parcel, in recent instances, such a variance has been permitted by the City's Board of Adjustment.

Pro:

- The proposal amends a comprehensive, coordinated sign package for a major development in a manner in keeping with City standards.

Con:

- None noted.

Based on the analysis provided in the report, staff finds this request to be reasonable and recommends approval for the sign package amendment for Weirbridge Village.

Vice-Mayor Manheimer opened the public hearing at 4:08 p.m.

The construction project manager for McDonalds Corporation explained how they will be relocating their existing McDonalds on Hendersonville Road (approximately ¼ mile south) to this new location. Their business has gone through several changes and their drive through traffic is up to about 70%. The new drive through layout will allow them to move cars more efficiently on and off the lot safely.

Councilman Pelly noted Crowfield neighborhood concerns about traffic as the entrance into their neighborhood is about 100-200 feet south of this location. Concerns raised are that Crowfields traffic who wish to turn north on Hendersonville Road are sometimes blocked by the traffic in the center lane wishing to turn into the new development and that this will only make matters worse. The construction project manager said that have an entrance at the back of their parcel as well a red light at the Turtle Creek Drive intersection with Hendersonville Road. There are other ways to enter and exit off that parcel. He also noted that there is also a red light at the intersection of Hendersonville Road and Racquet Club Road.

Mr. Rusty Pulliam, property owner, said that he has met numerous times with residents at Crowfields and has offered offered to give them an easement for access to the light at Turtle Creek Drive free. He felt that if they have those traffic concerns, the access easement is still an option for them.

Mr. Jim Curl, President of the Crowfields Condominiums Association, said that this traffic is a major issue for them. He felt that allowing a McDonalds into Weirbridge will be an intolerable traffic situation and exacerbate the traffic concerns tremendously, not to mention their concern of decreasing property values and their quality of life.

Vice-Mayor Manheimer closed the public hearing at 4:21 p.m.

When Councilman Hunt asked Mr. Curl about the access easement offer, Mr. Curl said that Crowfields will probably take him up on the easement; however, it is not an ideal solution.

Councilman Bothwell had a great deal of sympathy for the neighborhood, however, the request before Council is for two menu boards. The development is already approved and fits within the guidelines for the property. He did feel that perhaps there should be an amendment to the UDO to allow for two menu boards on a parcel if if variances are continuing to be requested and granted.

Councilman Pelly has met with the residents of Crowfields and is well aware of the problems that exist. He noted that during the next fiscal year, the City will be constructing several miles of new sidewalks along Hendersonville Road. He was frustrated that the development along Hendersonville Road has eroded the quality of life along that road and would vote against the amendment because the quality of development is not what the residents deserve.

Vice-Mayor Manheimer noted that the zoning package has already been approved for the usage of this parcel as a drive through for a restaurant. The only reason why this is before Council at this time is for the two menu boards. She noted that we are trying to preserve the quality of life, but also need to stand by the commitment to developers who have come before us with an approved plan.

City Attorney Oast noted that in order for this ordinance to pass, due to the absence of Mayor Bellamy and Councilman Smith, there will need to be an affirmative vote of all five Council members present. If the vote is less than that, the ordinance will need to come back for a second reading at the April 9 meeting.

Councilman Davis recommended that the matter be continued to April 9 to allow the full Council to vote.

Councilman Hunt moved to continue the matter to April 9, 2913, noting that the public hearing on this matter has been held. This motion was seconded by Councilman Davis and carried on a 4-1 vote, with Councilman Pelly voting "no."

Vice-Mayor Manheimer encouraged the developer and Crowfield representatives to discuss some creating compromising before the April 9 meeting. As far as Mayor Bellamy and Councilman Smith participating in the vote after the public hearing has already been held, they will have an opportunity to review any documents of the Council proceedings.

## V. UNFINISHED BUSINESS:

### A. MOTION GRANTING AN ADDITIONAL ONE-YEAR EXTENSION FOR THE PROJECT IDENTIFIED AS EAGLES LANDING, LOCATING AT 179 JOHNSTON BOULEVARD

Planning & Community Development Judy Daniel said that this is the consideration of a request for a one year extension of the conditional zoning approval for the Eagle's Landing development.

The Eagles' Landing development (consisting of 25 homes located at 179 Johnson Blvd.) was granted a conditional zoning in 2007, and the original developer subsequently sold the property to Habitat for Humanity. Because of the financial challenges in recent years, they have had delays arranging financing for the project, but remain committed to its completion.

In August of 2009 the City Council amended the approved conditional zoning to allow a few changes requested by Habitat, and extended the permit validity through October 11, 2010. Subsequently, through the North Carolina Permit Extension Act, the permit validity was extended through January 1, 2013. As they still faced financing issues, I was contacted by Habitat in 2012 about a further extension as allowed in the UDO. (The Planning Director is authorized to grant a

six month extension under Sec. 7-7-8(c)(9) which she granted.) These combined extensions will expire on July 1, 2013.

While close to being able to proceed with the project, Habitat is still awaiting final financing. They have applied for HOME funds this year to assist with infrastructure costs for the project, and if they are successful, the timing will not allow a start date meeting the July 1 deadline.

Habitat now anticipates that work at the site may not be able to commence until late in the summer or early fall.

In order to secure the project approval until the financing structure is completed, Habitat is requesting that the Council authorize a further extension of one year (also allowed within Sec. 7-7-8(c)(9) of the UDO). That provision allows the City Council to approve one additional extension of up to one year if the Council believes there is sufficient justification for the extension. The extension would extend the permit through July 1, 2014.

The staff believes it important to support the efforts and commitment of Habitat to this project. It will provide important and needed affordable housing options.

This proposal most closely supports the goal of *affordable* as it sustains the potential for an affordable housing development project to proceed, meeting the goal of supporting the creation and preservation of affordable rental and home ownership opportunities in Asheville.

Pro:

- Allows more time for this non-profit developer to secure final funding to complete this affordable housing project.

Con:

- None discernible.

No direct fiscal impact to the City as the action only extends the time available before the developer must act on the permit approval.

Staff recommends Council approval of this one year extension of the conditional zoning permit for Eagles' Landing.

Mr. Alan Ditmore supported this additional one-year extension.

Councilman Hunt moved to grant an additional one-year extension for the project identified as Eagles Landing, located at 179 Johnston Boulevard. This motion was seconded by Councilman Davis and carried unanimously.

**B. ASHEVILLE DOWNTOWN IMPROVEMENT DISTRICT INC.**

Vice-Mayor Manheimer announced that the consideration of the budget, tax rate and by-laws of the Asheville Downtown Improvement District has been continued to April 9, 2013.

**VI. NEW BUSINESS:**

**A. ORDINANCE 4174 - ORDINANCE ADOPTING THE FISCAL YEAR 2013-14 FEES & CHARGES**

Budget Manager Tony McDowell said that this is the consideration of proposed fee adjustments for the Fiscal Year 2013-2014.

The major types of revenue available to North Carolina counties and municipalities are local taxes (including property taxes); local fees, charges and assessments; and intergovernmental and miscellaneous revenue. Local governments have increasingly looked for appropriate opportunities to implement local fees and charges because they generally have the advantage of aligning service provision directly with payment; therefore, the person or entity receiving the benefit of a service pays for the service.

In Asheville, these fees make up about 10% of the City's General Fund revenue and 36% of city-wide revenue. These fees generally fall into three major categories: general user fees and charges; regulatory fees, and; public enterprise fees and charges.

- **General User Fees & Charges:** User fees are available feasible for any service that directly benefits individual users and generally are placed in the General Fund to support any general fund activity or program. User fees typically only cover a portion of the cost of the services for which they are assessed. Charges for parks and recreation services would fall into this category.
- **Regulatory Fees:** Regulatory fees cover costs associated with certain regulatory activities such as issuing building permits, performing inspections, reviewing development plans, and enforcing local ordinances. Case law requires regulatory fees to be reasonable and prohibits them from exceeding the average costs of funding the regulatory service.
- **Public Enterprise Fees & Charges:** A public enterprise is an activity of a commercial nature that could be provided by the private sector (water, sewer, electric service, solid waste collection and disposal, stormwater, airports, off-street parking, public transportation, etc.). Many public enterprises are self-supporting, meaning revenue generated from fees and charges is sufficient to cover the cost of providing the service.

**General User Fee Category:** Staff is recommending that Council replace the $3.50 per month household recycling charge with a $7.00 per month solid waste fee. This change in the fee structure is the first step in a multi-year Solid Waste Reduction Program. Staff is also recommending adjustments to various Parks and Recreation fees to move closer to full cost recovery for certain programs and services. There were some fees regarding the Aston Park Tennis Center; however, staff is recommending those be removed from Council consideration at this time.

**Public Enterprise Category:** In the Parking Fund, staff is proposing a 25-cent increase in the hourly fee for both garage and metered parking. The first hour will remain free in all garages. In the Water Resources Fund, staff is proposing the creation of a new manufacturing customer class, as well as the flowing rate adjustments:

- Single Family, Multi-Family, Small Commercial: 1% increase
- Large Commercial (>1,000 CCF/month): 3% increase
- Wholesale & Irrigation: 4% increase
- New Class Manufacturer (1-999 CCF/month): 1% increase (Rate same as small commercial $3.22/CCF)
- New Class Manufacturer (>1,000 CCF/month): 0% increase (Rate held flat from Large Commercial rate $1.69/CCF)
- Capital Improvement Fee: 1% increase for each meter size

The proposed FY 2013-14 fee adjustments were reviewed by the City Council Finance Committee on February 26, 2013, and a full summary and analysis of the proposed fees and charges was provided to Council.

This action complies with the City Council Strategic Operating Plan goal of "Operate the City of Asheville to the highest levels of fiscal responsibility."

Pros:

- Provides additional revenue to help balance the FY 2013-14 General Fund budget and fund Solid Waste Reduction initiatives.
- Provides staff with time to begin communicating fee changes to citizens, customers and stakeholders so they are aware of changes that will be implemented on July 1.

Con:

- None.

The fiscal impact of the proposed fee changes is shown in the table below. If Council approves, the proposed monthly solid waste fee, staff is recommending that approximately $400,000 from the new fee be used in FY 2013-14 to fund Solid Waste Reduction initiatives, including the purchase of route optimization software and solid waste and recycling containers for downtown.

| Fund | Additional Revenue |
|---|---|
| General Fund | $1,437,765 |
| Water Resources Fund | $307,513 |
| Parking Services Fund | $370,450 |

Staff recommends that Council adopt the proposed FY 2013-14 fee proposals.

Councilman Hunt confirmed that staff will not change the fee structure for Aston Park Tennis Center at this time. Parks & Recreation Director Roderick Simmons replied that they will be looking holistically the different staffing levels to operate that facility and report back to Council prior to adoption of the budget. The Food Lion Skate Park will also be included in their holistic analysis.

Councilman Davis felt there might need to be a larger conservation with the community to understand that we are trying to recover the costs of solid waste handling.

Councilman Bothwell explained that we are trying to be as green as we claim to be and we need to reduce the amount we dump in the landfill.

Councilman Hunt moved to adopt Ordinance No. 4174, with the exception of the fees related to the Aston Park Tennis Center, the Food Lion Skate Park and the Solid Waste Fees.

When Councilman Davis explained that he concurred with the solid waste fee, but was concerned about educating the public, Councilman Hunt then moved to adopt Ordinance No. 4174, with the exception of the fees related to the Aston Park Tennis Center (noting that the Food Lion Skate Park does not have any fees associated with this ordinance), and with the understanding that both the Tennis Center and Skate Park will be discussed further in the April 3 budget worksession. This motion was seconded by Councilman Pelly.

Mr. Alan Ditmore noted that conservation not only applies to trash, but to water as well, and the increase is a regressive tax.

Brother Christopher Chiaronmonte was concerned with the government becoming a dictatorship in forcing people to pay the solid waste fee whether they recycle or not.

Councilman Davis said that regarding water rates, we are in line with the consultant recommended - increasing a small amount at a time and creating two new manufacturing class categories. He stressed that we are trying to be responsible stewards.

Vice-Mayor Manheimer said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

The motion made by Councilman Hunt and seconded by Councilman Pelly carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 175**

**B. RESOLUTION NO. 13-60 - RESOLUTION DIRECTING CITY MANAGER TO OFFER EARLY RETIREMENT INCENTIVE PROGRAM**

Human Resources Manager of Health and Wellness Cheryl Walker said that this is the consideration of offering a Retirement Incentive Program for employees who are eligible to retire under the NC Local Governmental Employees Retirement System.

With the continued financial constraints, personnel services costs are continually evaluated and reviewed to determine if staffing levels and utilization are maximized. Part of this evaluation this year included a review of Retirement Incentive Programs. The City has offered Retirement Incentive Programs in the past, with the last one being in 2009. Historically, these programs have enabled the City to reduce the overall personnel costs and realign resources. The program provides those employees eligible for retirement with the NC Retirement System to receive a special financial incentive if they voluntarily agreed to retire in the current fiscal year.

In developing the proposed 2013 Retirement Incentive Program (Program), staff changed the incentive and the timeframes compared to the previous programs the City offered. Those retiring under this Program must indicate their intention no later than the May 17th, with an effective retirement date of either June 1 or July 1.

Staff has identified 145 employees who are eligible for unreduced or reduced retirement benefits by July 1, 2013. If 20% of those eligible to participate elect to retire prior to July 1, 2013, that would open up approximately 29 positions.

Departments with employees retiring under this Program may be required to adjust their budgets to reduce overall expenses. The position and/or salary from the vacated position(s) may not be available to the department for FY 2013-14. Consequently, reorganization or re-alignment of department activities may be necessary, particularly when a retiree leaves an essential position that cannot be eliminated or remain vacant for the entire fiscal year.

While this program could result in significant savings in personnel services costs, it also challenges departments' ability to provide critical services. Staff will develop a workforce review process to allow departments to request a waiver of the hiring freeze for critical positions or to utilize temporary employees to cover mandated functions. Staff will work together to develop opportunities to reorganize functions and ensure departmental business plans are evaluated and projects and work is prioritized and adjusted as necessary to match new staffing levels.

The estimated FY 2013-14 cost savings for the Program is difficult to predict based on the fact there is no way to know the level of participation that will be elected by those eligible. However, the following assumptions provide some insight into potential savings:

Assuming 29 employees elect to take the incentive.
Average salary is $54,238
Average incentive payment is $8,135

Average Vacation/Comp payment is $7,280
If positions are held vacant for a period of 6 months at minimum the estimated savings would be approximately $12,189 per position for a total of $353,481 for FY 2013-14.

Staff will report back to Council on the financial impact of the program as part of the FY 2013-14 1st quarter financial report.

City staff recommends City Council authorize the offering of a Retirement Incentive Program for retirement prior to July 1, 2013 for employees who are eligible to retire under the NC Local Governmental Employees Retirement System.

At 5:01 p.m., Councilman Hunt moved to recuse Vice-Mayor Manheimer from the remainder of the meeting. This motion was seconded by Councilman Bothwell and carried unanimously.

Councilman Bothwell moved to appoint Councilman Davis to preside over the remainder of the meeting. This motion was seconded by Councilman Pelly and carried unanimously.

Councilman Davis was assured by Ms. Walker that neither public safety nor customer service would be compromised from employees taking advantage of this program.

After City Attorney Oast read the resolution, Councilman Davis asked for public comment. No one spoke.

Councilman Hunt moved to adopt Resolution No. 13-60. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35 - PAGE 217**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Councilman Bothwell, Chair of the Public Safety Committee, noted that the Committee instructed the City Attorney to craft a resolution to support the bill that would outlaw synthetic marijuana.

Councilman Davis reported on a trip sponsored by MetLife about our growing age population as it relates to transportation accessibility and affordability.

Brother Christopher Chiaronmonte noted that the homeless need a peaceful, secure place to sleep.

**Lawsuit**

On March 8, 2013, the following civil action was received by the City: W&K Hotels, LLC, d/b/a Four Points by Sheraton; Hospitality Lodging Investors, II, LP, d/b/a Hotel Indigo; and Nesbitt Asheville Venture LLC d/b/a The Renaissance Hotel v. City of Asheville, et al. The nature of the proceeding is a complaint for declaratory judgment. This matter will be handled by an attorney outside the City Attorney's Office.

**VIII. ADJOURNMENT:**

Councilman Davis adjourned the meeting at 5:15 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Wednesday – April 3, 2013- 2:00 p.m.
First Floor North Conference Room

Budget Worksession & Town Hall Meeting

Present: Vice-Mayor Esther E. Manheimer, Presiding; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Associate City Attorney Martha McGlohon; and Deputy City Clerk Jaime Matthews

Vice-Mayor Manheimer called the meeting to order. Councilman Hunt moved to adjourn the meeting for 15 minutes to reconvene at the Banquet Hall in the U.S. Cellular Center. This motion was seconded by Councilman Davis and carried unanimously.

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; Associate City Attorney Martha McGlohon; and City Clerk Magdalen Burleson

Absent: None

At 2:15 p.m., Mayor Bellamy reconvened the meeting.

**Budget Worksession**

Ms. Ruth Summers, representing the Business Improvement District, briefly explained their progress to date and asked for Council's discretion on the implementation of the timetable.

Mayor Bellamy said that this item is on the April 9 agenda and perhaps their by-laws could be considered and approved so their progress continues to move forward.

**Town Hall Meeting**

Mayor Bellamy said that this meeting is an opportunity for City staff to present to Council and the public budget challenges for the upcoming year and to outline fiscal realities the City may face in light of pending legislation action by the North Carolina General Assembly. The City of Asheville currently faces a $2 Million gap in revenues vs. expenditures. Potential budget balancing strategies to close the gap were introduced at the March 12 Council budget worksession. Financial analysis indicates that legislation currently in the North Carolina General Assembly could widen that gap to $5.7 Million. The purpose of this meeting is to begin contingency planning in earnest for a $5.7 Million gap.

Executive Director of Finance & Strategic Planning Lauren Bradley provided Council with financial context and estimated impact of adverse legislation on the multi-year budget plan.

Using a PowerPoint, she explained that Asheville has been diligently responding to a financial crossroads (1) Asheville has been experiencing a structural imbalance in the rate of growth in revenues and expenditures. Expenditures are growing at a faster rate (as much as five times faster) than revenues; (2) Real estate growth has been minimal, and property tax revenue is unlikely to grow significantly in the near future. At the same time, Asheville's share of sales tax revenue has been declining. A lack of access to other revenue sources intensifies the effects of property and sales tax revenues on Asheville's financial structure; (3) Despite the recession and relatively tame inflation, many basic costs continue to go up for local governments. These costs include employee compensation and healthcare, fuel, utilities and equipment; (4) As a regional hub for the western portion of the state, Asheville's services and infrastructure support a population that exceeds its residential population. While the interdependency of Asheville and the surrounding area is critical to the region's economy, the city's lack of access to regional revenue sources intensifies Asheville's reliance on its property tax base; and (5) Asheville has been cutting its budget for several years, and this trend is reflected in deferred capital improvements,

reductions in force, salary freezes and other cost-saving measures. While fiscal constraint will continue to be required, capturing additional savings will become an increasingly elusive target. For instance, Asheville is on a 65-year resurfacing cycle for streets when the recommended cycle is 20 years. City employee compensation was frozen for three years. Vehicle replacement is on an 18-year cycle when the industry standard is 6-10 years.

Asheville has been developing fiscally responsible, long-range approach to financial management in FY 2014 (1) At the beginning of the budget process, Asheville identified the need to close a $2 million difference between projected revenues and expenditures. A plan was developed to balance the budget by freezing positions, reducing operating line items and making modest adjustments to fees while avoiding a property tax rate increase for ongoing operations; and (2) At the same time, Asheville developed a Economic Development and Community Investment Initiative designed to address the rate of revenue growth in the city. This strategy called for enhancing infrastructure investment to support redevelopment in targeted areas, business development and job growth with a focus on the River Arts District and Downtown. Projects considered within that strategy included RADTIP, multi-modal improvements in the South Slope area, greenway development, increased allocations to affordable housing development, the Eagle Market Place project, and the Asheville Art Museum renovation project. Services proposed by the BID were also considered in this strategy.

Proposed legislation will require service reductions or increased taxes: In the last several weeks and days, State legislation has been introduced that could have an impact on Asheville's financial forecast. She used a chart to show the preliminary estimate on the cumulative financial impact of proposed legislation based on noted assumptions. Much remains uncertain about proposed legislation at this time, and so this chart represents our best estimates given what we know today. The full impact of some bills, including potential financial offsets for cities, is not known. Asheville's projections will change as the legislative process moves forward.

Significant service reductions would be required to address the revised financial forecast on the expenditure side (1) The estimated impact of current legislation takes the difference between Asheville's revenues and expenditures from $2.2 million to $5.8 million in FY 14 (-$2.2 million + -$3.6 million operating impact from legislation). This is a preliminary estimate that assumes all proposed bills take effect. The original budget forecast assumed expenditure increases for market-based compensation, increases to the state retirement system, election costs, etc.; (2) The table below illustrates the level of service reductions that would be required to address the financial forecast solely on the expenditure side. The alternative to this level of service reductions is to raise property tax rates; (3) One penny on the tax rate generates about $1.1 million in revenue; (4) Legislation has been introduced to enable the consolidation of City and County Parks and Recreation services and facilities. While this proposal could have positive financial impacts for Asheville, the timeline and feasibility of this proposal is uncertain. Asheville will continue to pursue this proposal.

She then provided Council with suggested alternatives to offset the revenue losses.

| | |
|---|---|
| Starting Point | ($5,986,000) |
| Expenditure Reductions | |
| Retirement incentive/freeze or eliminate 15 positions | $600,000 |
| Line Item Reductions (reductions to various operating expenses) | $550,000 |
| Close one fire station | $530,000 |
| Eliminate Saturday Transit Service | $500,000 |
| Close the WNC Nature Center | $450,000 |
| Discontinue Bele Chere this summer | $450,000 |
| Freeze targeted police vacancies | $300,000 |
| Eliminate youth and adult athletics | $250,000 |
| Eliminate nuisance court/cleanliness crew | $250,000 |
| Reduce Housing Trust Fund allocation | $200,000 |
| Reduce street and sidewalk maintenance/construction | $200,000 |

| | |
|---|---|
| Close all city pools | $117,000 |
| Re-engineer staffing at Aston Park & Skate Park | $108,000 |
| Reduce Police over-time | $100,000 |
| | |
| Revenue Enhancements | |
| | |
| Fee Adjustments | $940,000 |
| Property Tax Increase | - |
| | |
| Total Budget Balancing Strategies | $5,545,000 |

Asheville serves as an important regional hub for economic development, jobs and recovery from the recession (1) Given cities' role as the center of economic growth and prosperity for counties and regions, taking away all regional sources of revenue harms the ability to support the regional job base and business expansion; (2) The economic interdependency between Asheville, Buncombe County and the surrounding region has an impact on the lives of more than 1.3 million citizens living in 23 counties, an area of about 11,000 square miles (roughly the size of the state of Massachusetts). Legislation that impacts Asheville impacts almost a quarter of counties in the State; (3) The Asheville-metro area led the state with 3.6% job growth in year-over-year employment statistics (from Jan. 2012-Jan. 2013, according to the NC Justice Center). Also in that year Asheville had the third largest share of the state's overall employment growth. The metro areas of Asheville, Raleigh and Charlotte together accounted for more than 2/3 of the state's job growth. She reviewed a table which showed a two-year comparison of job growth across the state, where the Asheville metro area follows only Charlotte and Raleigh; and (4) These are promising figures that show signs of a recovering economy in Western North Carolina. Cities' ability to invest in regional infrastructure or critical services supports this type of economic growth. Without it, cities will be faced with two decisions – to raise taxes or to forego regional investments that support jobs and business growth – both of which are negative for North Carolina's economy.

The changes in the forecast will likely require deferring economic development incentives and enhanced capital investment (1) If the estimated financial impact is realized, Asheville would lose the flexibility to consider increasing investment in the Economic Development and Community Investment Initiative via an enhanced capital improvement plan. Projects would have to be deferred unless other sources of revenues are identified; (2) Under this scenario, staff would also recommend deferring implementation of a tax rate for a Business Improvement District due to consideration of city-wide service reductions and city-wide tax rate increases.

Staff recommends scheduling an additional budget work session on April 23 and extending the budget adoption out to June 11. If the financial forecast is not more certain by that time, another extension can be made for budget adoption to June 25. The budget must be adopted by June 30. Staff would recommend using the extension to gain additional City Council direction on budget balancing strategies in response to the changing forecast.

Next steps include (1) City Council consider adopting a resolution or official message that urges the State to hold all municipalities harmless from any changes to tax structures and the transfer of the water system to provide enough revenue to meet municipal service needs during all phases of the economic cycle; (2) Continue to communicate with legislators about tax reform and the water system transfer and their implications for Asheville. Explain what is at stake for our community; (3) Continue to work with Buncombe County to explore the feasibility of a consolidated Parks and Recreation District as proposed in H418; and (4) Schedule the next budget work session for April 23.

Individuals from the audience voiced their concern over the possible budget reductions outlined above by Ms. Bradley.

Mayor Bellamy thanked the public for attending and noted the concerns that the City is addressing today is not manufactured by the City of Asheville or our economy - they are being manufactured by our legislature. City Council members each voiced their concerns of the proposed

legislation that would require service reductions or increased taxes. They urged our citizens and residents outside the City to join Asheville in this struggle by contacting our legislators, other legislators in western North Carolina, Governor McCrory and others, with the understanding that we can come together and have a unified voice for responsible government. Council is concerned about the damage to cities and damage to the North Carolina economy as a whole. Because this is an on-going dialogue, as City Council continues in this process, they will strive to keep the public informed, noting on the City's website there is information on the budget process - www.ashevillenc.gov - City Budget.

At 5:15 p.m., Mayor Bellamy adjourned the meeting.

Magdalen Bourleson
City Clerk

Mayor

Tuesday – April 9, 2013- 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis (left meeting at 6:39 p.m.); Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; Deputy City Manager Jeffrey Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Pelly gave the invocation.

**I. PROCLAMATIONS:**

**A. SOUTHERN CONFERENCE**

On behalf of City Council, Mayor Bellamy recognized the following individuals from various organizations for their invaluable service another successful Southern Conference in Asheville: Ben Van Camp, Adrian Vassallo, Allison Moore, Austin Tyler, Bruce Peterson, Carol Peterson, Chris Corl, Dan Dover, Dan Hawk, Desiree Monstrola, Dianna Jackson Pierce, Dodie Stephens, Gary Jackson, Greg Duff, Councilman Jan Davis, Janet Cone, Janet Lampkin, Tim Lampkin, Jeff Richardson, John Pierce, Jon Creighton, Jon Yarbrough, K. Ray Bailey, Lauren Cooper McDevitt, Lou Bissette, Lyn Gleasure, Mary Helen Letterle, Mike Burke, Ron Storto, Sam Powers, Jonathan Bailey, and Nancy Righi.

**B. EMPLOYEE RECOGNITIONS**

Deputy City Manager Richardson recognized Mr. David D. Bailey, President and CEO of the United Way of Asheville and Buncombe County, who recognized Fire Chief Scott Burnett and campaign coordinators: Lt. Mike Yelton, Janet Lampkin, Brad Stein, David Carr, Pam Kelly, Jessica Bernstein, Alina Law, Lora Morgan, Ron Kerns, Christy Bass and Scott Barnwell. The team of departmental coordinators deserve this recognition for inspiring their colleagues to participate in this year's United Way campaign. The City of Asheville's contributions were 3% higher than last year. An even better measure of our success is that for the first time in 6 years, we have increased our giving! The City of Asheville also has received the Spirit of North Carolina Award from the United Way in the category of City/County Municipality of 1001 - 1500 Employees. This award program is an important statewide initiative that recognizes companies and employees for their outstanding support of the community by demonstrating excellence in their United Way campaign. Fire Chief Scott Burnett was recognized for the exceptional manner with which he led our campaign and improved the Asheville Fire Department participation. Ken Putnam, who led a departmental team, won in the chili cook off contest and later collected $500 in donations just for wearing UNC-Chapel Hill Carolina Blue clothing. Mr. Putnam also received individual recognition from the United Way. Most of our department directors submitted themselves for a dunk tank fundraiser at an employee picnic on a cold day last fall.

Mayor Bellamy thanked the employees on what they do on behalf of the City of Asheville and City Council. She was proud of City staff and looked forward to highlighting more accomplishments.

**C. PROCLAMATION PROCLAIMING APRIL 2013 AS "CHILD ABUSE AWARENESS MONTH"**

Mayor Bellamy read the proclamation proclaiming April, 2012, as "Child Abuse Awareness Month" in the City of Asheville. She presented the proclamation to Mr. Bill McGuire, Director/CEO of Child Abuse Prevention Services Inc., who briefed City Council on some activities taking place during the month.

**D. PROCLAMATION PROCLAIMING APRIL 2013 AS "AUTISM AWARENESS MONTH"**

Mayor Bellamy read the proclamation proclaiming April, 2012, as "Autism Awareness Month" in the City of Asheville. She presented the proclamation to Mr. Joe Yurchak, representing the Autism Society of North Carolina, who briefed City Council on some activities taking place during the month.

**E. PROCLAMATION PROCLAIMING APRIL 21-27, 2013, AS "NATIONAL VOLUNTEER WEEK"**

Mayor Bellamy read the proclamation proclaiming April 21-27, 2013, as "National Volunteer Week" in the City of Asheville. She presented the proclamation to Mr. Charles Lee, Program Manager of Hands On Asheville, our local clearing house for non-profit volunteer opportunities, who briefed City Council on some activities taking place during the week.

**II. CONSENT AGENDA:**

At the request of City staff, a resolution authorizing the Mayor to accept the grant award offer from the US Economic Development Administration for the Craven Streets Improvement Project was added to the Consent Agenda.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 26, 2013**

**B. RESOLUTION NO. 13-61- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONSTRUCTION CONTRACT WITH COOPER CONSTRUCTION COMPANY INC. FOR THE GROVEMONT & SCENIC VIEW NEIGHBORHOOD WATER LINE REPLACEMENTS**

**ORDINANCE NO. 4175 - BUDGET AMENDMENT FOR THE GROVEMONT & SCENIC VIEW NEIGHBORHOOD WATER LINE REPLACEMENTS**

Summary: The consideration of a resolution authorizing the City Manager to enter into a construction agreement with Cooper Construction Company, Inc., for the bid amount of $2,475,027.50 plus a contingency amount of $371,254.13 for a total project amount of $2,846,281.63 for the Grovemont & Scenic View Neighborhood Water Line Replacements; and a budget amendment in the amount of $1,752,337.00 from savings in other capital projects that were completed under budget.

This project consists of the construction and installation of: approximately 40,000 linear feet of 8-inch & 6-inch ductile iron pipe, a limited amount of 2-inch copper pipe, and all necessary accessories and appurtenances to replace the existing water mains, including valves, hydrants, service connections; abandonment of existing water mains and appurtenances; and other

miscellaneous work in order to provide fire protection and domestic water service to the Grovemont Neighborhood. The Water Resources Department (WRD) issued an Advertisement For Bids for the construction project. In response to the Advertisement for Bids, the WRD received four (4) proposals.

Companies responding were:

1. Buchanan and Sons, Inc – Whittier, NC
2. Buckeye Construction Company, Inc. –Canton, NC
3. Cooper Construction Company, Inc. – Hendersonville, NC
4. T&K Utilities, Inc.– Asheville, NC

The bids were reviewed by City Staff and Michael Baker Engineering, Inc. and Cooper Construction Company, Inc. was selected as the lowest responsible bidder at a bid of $2,475,027.50. A contingency amount of $371,254.13 has been added for a project amount of $2,846,281.63.

This project is part of City Council's strategic plans to improve city infrastructure and provide local companies with labor opportunities, while operating the system in a responsible fiscal manner.

Pros:

- This project will replace existing waterlines, which are undersized for adequate fire protection and due to age, have a high risk of failure causing costly repairs for the City and Water Resources Department and frequent outages for the customers, with a durable, reliable, sustainable water system for the Grovemont Neighborhood.
- This project is aligned with the City and Water Resources Department goal of continued investment and improvement of the City's water system through Capital Improvement Projects, in order to provide safe and reliable service.
- Approval of the construction contract to the lowest responsible bidder will invest City funds in the local economy.

Con:

- Failure to award a construction contract would prevent the completion of this important waterline system improvement.

The Water Resources Department currently has $1,093,945.00 budgeted for this project. The remaining funds of $1,752,337.00 needed for the contract will be transferred from the General Projects capital project that accumulates remaining funds from all of Water Resources completed, inactive capital projects. In order to use the funds in General Projects, a budget amendment is necessary.

| | |
|---|---|
| Amount in Project Budget | $1,093,945.00 |
| Budget Amendment Needed for Construction Contract | $1,752,337.00 |
| Total Amount for Project | $2,846,282.00 |

The amount remaining in General Projects will be reallocated to other capital projects as the need arises. Staff will seek Council approval on any future reallocation of these funds.

City staff recommends City Council (1) authorize the City Manager to enter into an agreement with Cooper Construction Company, Inc., for the bid amount of $2,475,027.50. plus a reserved contingency amount of $371,254.13 be identified for this project for a total project amount of $2,846,281.63 for the Grovemont & Scenic View Neighborhood Water Line Replacements; and (2) approve a budget amendment in the amount of $1,752,337.00 to transfer adequate funds from the Water General Projects capital fund to meet the financial requirements of this project.

**RESOLUTION BOOK NO. 35 - PAGE 218**
**ORDINANCE NO. 28 - PAGE 182**

**C. RESOLUTION NO. 13-62 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH BREKFORD FOR PARKING CITATION MANAGEMENT SERVICES IN THE CITY'S PARKING SERVICES DIVISION FROM MAY 2013, THROUGH JUNE 30, 2016**

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with Brekford for parking citation management services in the City's Parking Services Division from May 1, 2013 thru June 30, 2016.

Parking Services Division administers parking citations issued by the Asheville Police Department, Asheville Airport Police, Asheville Fire and Rescue Department, volunteers in the Volunteer Handicap Parking Enforcement Program, and its internal parking enforcement officers. Total citations written annually range from 35,000 – 40,000. Approximately 5% are hand written with the remaining 95% generated by handheld computers.

The current parking citation management system, a component of HTE, dates from 2004, is outdated, expensive to maintain, and is being phased out by the City's Information Technology Department. The current handheld computers, Auto Cite S3, also date from July 2004 and are expensive to maintain as well. This system is inefficient whereas thousands of offenders must be identified in North Carolina Department of Motor Vehicles databases and hand entered, by City staffers, into the HTE system. The City contracts with private firms to identify out-of-state offenders whom City staff also hand enter into HTE. These actions often delay notification to citizens of late fees assessed for unpaid citations. In addition, the current system is not customer friendly as most actions have to be done with paper without an on-line option, especially appeals.

Parking Services is one of the last divisions to phase out of HTE. The resident parking citation management system, provided by Tyler as part of the City's MUNIS conversion, did not meet the City's needs or provide better customer service to our citizens. The City issued a Request for Proposal, in December 2012, I from interested firms to replace the current system. Seven firms responded and four were invited to provide demonstrations of their systems on March 14, 2012 to the selection committee. Each firm was then requested to provide their best and final offer as to price per ticket. The selection committee, consisting of members from Information Technology, Treasury Services, Parking Services, and Transportation Department selected Brekford as the best over all value for the City.

Proposed system is hosted by the vendor, and all based on per ticket charge including handheld computerized ticket writers, and associated hardware, that was heretofore purchased separately. It also provides better visibility of citations, appeals, and decisions by citizens. Proposed handheld devices have built in cameras that make citation documentation much easier as well. Citizens will be able to review the pictures while determining to appeal the citation.

This action complies with the City Council Strategic Operating Plan in that it provides safe facilities for residents and visitors to park in the most cost effective manner and provides better customer service

Pros:

- Replaces current HTE model as it is being phased out.
- Hosted system, with all-inclusive-per-ticket-pricing, will not require capital outlay for expanded server infrastructure or new mobile units.
- Faster identification, and therefore notification, of registered vehicle owners owing unpaid citations.
- On-line appeals process for citations.

- Proposed handheld devices will work with most existing pay-by-phone meter payment systems thereby increasing efficiency of parking enforcement officers.
- Provide greater visibility and transparency to citizens when reviewing citations issued to their vehicles.
- Improves efficiency within the Parking Services Division.
- Automated identification of scofflaws eligible to be immobilized.

Con:

- Additional annual expense of approximately $60,000 per year.

The necessary funds are already budgeted in the Parking Services Fund's Operating Budget for FY 2012-13 and will be included in budget recommendations for fiscal years FY 14 and 15. .

City staff recommends that City Council adopt a resolution authorizing the City Manager to sign a three year two month contract with Brekford in the amount of $200,000.00 not to exceed $60,000 per fiscal year.

**RESOLUTION BOOK NO. 35 - PAGE 220**

**D. RESOLUTION NO. 13-63 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER FOR A CONTRACT WITH ASHEVILLE STAFFING INC. FOR TEMPORARY SERVICES IN THE CITY'S PARKING GARAGES AND SURFACE PARKING LOTS THROUGH JUNE 30, 2013**

Summary: The consideration of a resolution authorizing the City Manager to execute a change order for a contract with Asheville Staffing, Inc for temporary services in the City's parking garages and surface parking lots through June 30, 2013.

The City of Asheville, through the Parking Services Division, currently operates four parking garages and several monthly parking and pay-by-space surface parking lots downtown. Parking Services Division uses a combination of City employees and contract temporary workers to provide service and customer assistance in these facilities and lots. Generally, City employees work during the business day and early evenings while contract temporary services are used for fill-ins, special events, and to extend garage hours during late evenings, weekends, and holidays. Use of temporary workers allows the greatest flexibility as needs vary greatly depending on time of year and events booked at the U.S. Cellular Center, outside special events, and other large venues downtown.

Estimating the needs for fill-ins and special event staffing 15 months in advance is at best an educated guess. This current fiscal year has presented Parking Services with unexpected employee turn over as well as new staffing for the Biltmore Avenue Garage. In addition, special events staffing demand has been stronger than expected as well. These actions translate into higher than projected revenues coming in for the garages; especially in transitory and special event parking where temporary staffing is mostly utilized. And, we still have some large special events scheduled such as Bob Dylan and the circus that should sell well. The current contract with Asheville Staffing is not to exceed $89,000. Staff is requesting authorization to execute a change order to make the contract not to exceed $130,000.

This action complies with the City Council Strategic Operating Plan in that it provides safe facilities for residents and visitors to park in the most cost effective manner and provides better customer service

Pros:

- Provides safe and convenient facilities for residents and visitors parking.

- Using temporary service employees is the most cost effective and flexible manner to augment the Parking Services Division's staffing requirements.
- Allows parking Services to capitalize on extended weekend/nights/holiday hours to bring in additional revenue.

Con:

- Additional $41,000 expenditure.

The necessary funds are already budgeted in the Parking Services' Operating Budget for FY 2012-13.

City staff recommends that City Council adopt a resolution authorizing the City Manager to sign a change order in the contract with Asheville Staffing to increase the contract amount to not exceed $130,000.

**RESOLUTION BOOK NO. 35 - PAGE 221**

**E. RESOLUTION NO. 13-64 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT ASHEVILLE EARTH DAY ON APRIL 20, 2013**

**RESOLUTION NO. 13-65 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BIG LOVE FEST ON MAY 5, 2013**

**RESOLUTION NO. 13-66 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT DOWNTOWN AFTER FIVE EVENTS ON MAY 17, JUNE 21, JULY 19, AUGUST 16 AND SEPTEMBER 20, 2013**

**RESOLUTION NO. 13-67 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BEER CITY FESTIVAL ON JUNE 1, 2013**

**RESOLUTION NO. 13-68 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SAFARI EVENT ON JUNE 8, 2013**

**RESOLUTION NO. 13-69 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE FRENCH BROAD CYCLING CLASSIC ON JULY 21, 2013**

**RESOLUTION NO. 13-70 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BEER CITY CUP EVENT ON SEPTEMBER 1, 2013**

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at Asheville Earth Day on April 20, 2013; The Big Love Fest on May 5, 2013; Downtown After 5 on May 17, June 21, July 19, August 16, September 20, 2013, Beer City Festival on June 1, 2013; Mountain Safari on June 8, 2013; French Broad Cycling Classic on July 21, 2013; and the Beer City Cup on September 1, 2013.

- Lake Eden Arts Festival has requested through the City of Asheville Development Services Department that City Council permit the sale of beer and/or unfortified wine at Asheville Earth Day and allow for consumption at this event.

Asheville Earth Day will be held on Saturday, April 20, 2013, from 12:00 p.m. – 10:00 p.m. on Lexington Avenue between the intersections of Hiawassee and the I-240 underpass, extending within the metered parking lot located at the I-240 underpass, as per the event area limits referenced on the accompanying site map.

- The Asheville City Schools Foundation has requested through the City of Asheville Development Services Department that City Council permit the sale of beer and/or unfortified wine at The Big Love Fest and allow for consumption at this event.

  The Big Love Fest will be held on Sunday, May 5, 2013, from 12:00 p.m. – 8:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green, Reuter Terrace, Vance Median and Raised Lawn areas including South Spruce Street between the intersections of South Pack Square and College Street, North Pack Square between the intersections of Biltmore Avenue and South Pack Square, South Pack Square between the intersections of Biltmore Avenue and South Market Street and within the City Hall/Courthouse Parking Lot as per the area limits referenced on the accompanying site map.

- The Asheville Downtown Association has requested through the City of Asheville Development Service Department that City Council permit them to serve beer and/or unfortified wine at Downtown After 5 and allow for consumption at this event.

  Downtown After 5 will be held on Fridays, May 17, June 21, July 19, August 16 and September 20, 2013 from 5:00 p.m. – 9:00 p.m. on Lexington Avenue between the intersections of Hiawassee and the I-240 underpass, extending within the metered parking lot located at the I-240 underpass, as per the event area limits referenced on the accompanying site map.

- Big Brothers Big Sisters of WNC has requested through the City of Asheville Development Service Department that City Council permit them to serve beer and/or unfortified wine at the Beer City Festival and allow for consumption at this event.

  The Beer City Festival will be held on Saturday, June 1, 2013 from 12:00 p.m. to 6:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green, Spruce Street between the intersections of South Pack Square & College Street, and within the City Hall/Courthouse Parking Lot as per the area limits referenced on accompanying site map.

- Friends of the WNC Nature Center has requested through the City of Asheville Development Service Department that City Council permit them to serve beer and/or unfortified wine at Mountain Safari and allow for consumption at this event.

  Mountain Safari will be held on Saturday, June 8, 2013 from 5:30 p.m. to 9:30 p.m. within the boundaries of the WNC Nature Center as per the area limits referenced on accompanying site map.

- Asheville Bicycle Racing Club has requested through the City of Asheville Development Service Department that City Council permit them to serve beer and/or unfortified wine at the French Broad Cycling Classic and allow for consumption at this event.

  The French Broad Cycling Classic will be held on Sunday, July 21, 2013 from 8:00 a.m. to 6:00 p.m. within designated segments of Thetford Street, Town Square Boulevard, Schenck Parkway, Dearborn Street, and Schenck Crescent as per the area limits referenced on accompanying site map.

- The Western North Carolina Soccer Foundation has requested through the City of Asheville Development Service Department that City Council permit them to serve beer and/or unfortified wine at the Beer City Cup and allow for consumption at this event.

  The Beer City Cup will be held on Sunday, September 1, 2013 from 9:00 a.m. to 11:00 p.m. within the boundaries of Memorial Stadium as per the area limits referenced on accompanying site map.

These actions have no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for Lake Eden Arts Festival, the Asheville City Schools Foundation, the Asheville Downtown Association, Big Brothers Big Sisters of WNC, Friends of the WNC Nature Center, Asheville Bicycle Racing Club, and the Western North Carolina Soccer Foundation.

Con:

- Potential for public safety issues

City staff recommends City Council adopt resolutions authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Asheville Earth Day, The Big Love Fest, Downtown After 5, the Beer City Festival, the Mountain Safari, the French Broad Cycling Classic, and the Beer City Cup.

**RESOLUTION NO. 13-64 - RESOLUTION BOOK NO. 35 - PAGE 222**
**RESOLUTION NO. 13-65 - RESOLUTION BOOK NO. 35 - PAGE 225**
**RESOLUTION NO. 13-66 - RESOLUTION BOOK NO. 35 - PAGE 228**
**RESOLUTION NO. 13-67 - RESOLUTION BOOK NO. 35 - PAGE 231**
**RESOLUTION NO. 13-68 - RESOLUTION BOOK NO. 35 - PAGE 234**
**RESOLUTION NO. 13-69 - RESOLUTION BOOK NO. 35 - PAGE 237**
**RESOLUTION NO. 13-70 - RESOLUTION BOOK NO. 35 - PAGE 240**

**F. ORDINANCE NO. 4176 - BUDGET AMENDMENT FOR 2013 BOJANGLES EASTER EGGSTRAVAGANZA**

Summary: The consideration of a budget amendment, in the amount of $4,000, for the 2013 Bojangles' Easter Eggstravaganza from a sponsorship from Bojangles' Famous Chicken and Biscuits.

Bojangles' Famous Chicken and Biscuits is the naming sponsor for the city's annual Easter event at Carrier Park, Bojangles' Easter Eggstravaganza. Sponsorship funds are used to support event operating cost including but not limited to the purchase of supplies and materials for activities such as face painting, goody bags and Easter egg hunt; and to rent inflatable play structures.

This action complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it strengthens partnerships with funding partners, and increases revenue opportunities through sponsorships.

Pro:

- Provides funding to support production cost of the annual Bojangles' Easter Eggstravaganza.

Con:

- None

The budget amendment will increase the operating budget in the Parks, Recreation and Cultural Arts Department for supplies and rents by $4,000 to fund the 2013 Bojangles' Easter Eggstravaganza.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to increase the budget in the amount of $4,000 for the 2013 Bojangles' Easter Eggstravaganza.

**ORDINANCE BOOK NO. 28 - PAGE 184**

**G. RESOLUTION NO. 13-71 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CDM-SMITH TO PERFORM ENGINEERING AND DESIGN SERVICES FOR THE RIVER ARTS DISTRICT TRANSPORTATION IMPROVEMENT PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with CDM-Smith to perform engineering and design services for the RADTIP, and to conduct other necessary pre-development activities for a project budget not to exceed $100,000.

The City of Asheville recently completed a federally approved environmental document and preliminary designs for a multi-modal transportation project known as the RADTIP. The RADTIP will construct roadway improvements, sidewalks, bike lanes and greenways along Lyman Street and part of Riverside Drive. The City's consultant, CDM-Smith led an extensive process which included public involvement, design, and technical documentation of environmental impacts to bring the project design to a level of 30% complete..

The next step toward implementing the RADTIP involves engineering and design services to advance the RADTIP construction design toward the 75% complete level. This will put the City in a position to begin acquiring right-of-way and seeking funding for construction.

The development of construction plans for the RADTIP is one of the deliverables of the East of the Riverway Sustainable Multi-Modal Neighborhood Program, supported by a TIGER II Planning Grant awarded to the City of Asheville by the US Department of Transportation. The TIGER II funds allocated to the RADTIP totals $100,000, supported by a City cash and in-kind match of $20,000 (20% of grant funds).

Staff followed the municipal and required Federal Transportation Administration "Request for Qualifications" procurement processes to seek qualified, professional firms to perform engineering and design services. After thorough review and evaluation, a review panel recommended CDM Smith as the most qualified to perform this next phase of engineering and design services for the RADTIP.

The final scope of services for this phase of the RADTIP is still being refined. The current available funding will only cover a portion of the necessary design and engineering for the RADTIP. One of the goals for this phase of engineering is to include an analysis of the Craven Street intersection and the Norfolk Southern railroad bridge in order to continue to explore ways to accommodate truck traffic associated with New Belgium.

This project supports the City of Asheville's Strategic Operating Plan under the goals of Multi-Modal Transportation, and Job Growth and Community Development. In addition the project supports implementation of numerous master plans including the Wilma Dykeman Riverway Plan, Sustainable Economic Development Plan, Greenway Master Plan, and the 2025 City Development Plan.

Pro:

- City Council has identified implementation of the RADTIP as a key strategic goal for the city. Continued development of construction designs for the RADTIP will advance this goal.

Cons:

- Once complete, the project will require additional maintenance resources.
- As project development moves forward, the RADTIP will require an increased commitment of city resources in the CIP budget and of staff resources to administer the project.

This project is funded with budgeted sources, with local funds leveraging federal funding. The $100,000 to support the contract is budgeted via HUD TIGER II Grant. The City in-kind staff hours, are more than sufficient to meet the match required by the grant; such amounts have been approved by Council.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with CDM Smith to perform engineering and design services for the RADTIP for an amount not to exceed $100,000.

**RESOLUTION BOOK NO. 35 - PAGE 243**

**H. RESOLUTION NO. 13-72 - RESOLUTION AUTHORIZING THE STANDARDIZATION PURCHASE OF NCAA COMPETITION BASKETBALL COURT AT THE U.S. CELLULAR CENTER FROM PRATERS FLOORING**

Summary: The consideration of a resolution authorizing the Civic Center d/b/a U.S. Cellular Center Asheville to purchase a NCAA competition basketball court from Praters Flooring.

The U.S. Cellular Center has capital funds available for the procurement of one basketball floor and a set of goals, padding and related equipment. The procurement of these items will provide groups such as the Southern Conference, Harlem Globetrotters and potential other clients such as NBA teams and High School basketball tournaments with a higher quality competition court. The current floor has numerous 'dead spots' and due to age and deterioration and involves nearly sixty (60) additional man hours to set up and tear down than and court in better shape.

Praters Floors is the exclusive floor provider for the NCAA men's and Women's basketball championships. Each year, courts used at various Regional and Final Four locations are sold to venues and universities at a 'used' rate. According to staff research, Praters Floors is the only provider of 'one time use' courts that have an approximate shelf life of twenty to thirty years dependant on number of times sanded; approximately ten years per sanding. Purchase of this 'one time use' court provides the U.S Cellular Center and its clients with essentially a brand new court for roughly $65,000 less than a brand new basketball court for only approximately $20,000 more than a used court with half of the shelf life.

The current court used by clients at the U.S. Cellular Center was purchased used from Kansas State University in 2001 in preparation for the addition of Asheville's former NBADL team. This court has reached the end of its shelf life having been sanded and repainted two (2) times while in the City's possession and numerous times prior.

Electing to purchase our basketball floor through Praters Flooring is consistent with Councils goal for innovative financing with public/private partnerships. Purchase of a new baseball court is required in order to receive full grant monies awarded by the Buncombe County TDA. This is also consistent with Council's goal of fiscal responsibility, ensuring that we are

purchasing a 'one time use' court and not taking a chance on purchasing a court with significant wear and tear.

Pros:

- Professional grade court for professional grade clients
- Reduced or eliminated 'dead spots'
- Professional 'look' for television broadcasts.

Con:

- None

The exception to bid will have no long term fiscal impact. The estimated cost of the floor and the related items is $180,000. Payment for this purchase will be made from capital funds already budgeted for the renovations currently occurring at the U.S. Cellular Center. Staff will pursue sale of the current court and goals after purchase and delivery of new court and goals.

City staff recommends City Council adopt resolution authorizing the Civic Center d/b/a U.S. Cellular Center to purchase a new floor and goals from Praters Flooring from currently approved capital budget lines.

**RESOLUTION BOOK NO. 35 - PAGE 244**

**I. RESOLUTION NO. 13-76 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER WITH BRANTLEY CONSTRUCTION CO. LLC AND TO AMEND THE PROFESSIONAL SERVICES CONTRACT WITH BETSCH ASSOCIATES/CLARK NEXEN FOR RENOVATIONS TO THE U.S. CELLULAR CENTER**

**ORDINANCE NO. 4177 - BUDGET AMENDMENT FOR RENOVATIONS TO THE U.S. CELLULAR CENTER FOR SOUTHERN CONFERENCE**

Summary: The consideration of (1) a resolution authorizing the City Manager to execute a change order with Brantley Construction Co., LLC to add the alternate bid items (listed below) to the contract awarded on February 15, 2013; and to amend the Professional Services contract with Betsch Associates/Clark Nexen by $55,600 for the design of the Mezzanine level improvements; and (2) a budget amendment in the amount of $839,917 from TDA and US Cellular sponsorship revenue to provide sufficient budget authorization for all contracts and expenses that are anticipated prior to June 30, 2013.

City Council previously approved a contract with Brantley Construction on February 15, 2013, in the amount of $1,876,000 for the next phase of renovations at the U.S. Cellular Center. The construction contract currently is $1,876,000 and these alternates will increase the contract to the amount of $2,378,107 plus a 10% contingency for the purpose of continuing the current phase of U.S. Cellular Center renovations. At the time the contract was approved the City did not have the necessary funding to include certain alternates. On March 22, 2013, the U.S. Cellular Center received a TPDF Grant from the Buncombe County Tourism Development Authority, allowing us to fund the alternates and include them in the contract with Brantley Construction. The contractor agreed to hold the pricing of those alternates beyond the typical 30 day time period so as to allow the City the opportunity to secure funding. Staff is seeking Council approval of a change order to this contract that will incorporate the alternates listed below that were included in the original bid package dated December 13, 2012:

Alternate #4: General renovations to the Concourse and Arena level restrooms
Alternate #5: Replacing tile flooring in the Concourse and Arena level restrooms
Alternate #6: Replacing lavatory faucets in the Concourse and Arena level restrooms

Alternate #8: Renovations to the South Concourse concession stand
Alternate #9: Replacement of all Arena level Exit doors
Alternate #10: Replace Urinals, lavatory's and flush valves in the Concourse and Arena level restrooms.

A standard procedure in construction contracts is to provide a contingency to cover potential routine project change order requests for unforeseen construction components related to the overall renovation. Staff is seeking approval to add an additional 10% contingency and to authorize the City Manager to execute change orders for the contract up to the amended contract amount above not to exceed $237,810.70. While staff does not expect change orders to rise to the amount of $237,810.70, there are some unknown factors that could increase the original contract scope.

Approval of the resolution to amend the contract with Betsch Associates/Clark Nexen allows staff to proceed with the design of the Mezzanine level improvements. This part of the renovations is currently in the design phase and will potentially be added by future change order to the current contract with Brantley Construction in the upcoming fiscal year.

In order to fund the contract change orders with Betsch Associates/Clark Nexen and Brantley Construction and all other anticipated contracts and expenses prior to June 30, 2013, staff is requesting approval of a budget amendment in the amount of $839,917 utilizing funding received from the Tourism Development Authority and the US Cellular sponsorship agreement. Additional budget authorization for the renovations project will be included in the FY 2013-14 budget ordinance that staff brings forward for Council approval in June.

This action complies with the City Council Strategic Operating Plan's Fiscal Responsibility goal of developing strategic partnerships to leverage resources for infrastructure and CIP projects. This action also complies with the Civic Center Commission Master Plan that encourages continuing renovations for the facility, and supports the goal of developing new partnerships. In addition, this supports Council's strategic plan allowing for timely renovations to the U.S. Cellular Center.

This has been reviewed and recommended by the Civic Center Commission.

Pros:

- Allows for continued and timely renovations to the U.S. Cellular Center
- Assures that the project will stay within the specified budget, including change orders.
- Allows the U.S. Cellular Center to provide additional amenities to the patrons and allows for additional revenue potential through renovation of additional usable Mezzanine spaces.
- Allows the City to continue working with a design team that has the most knowledge of the facility and it's needs
- Provides the means for the City and U.S. Cellular Center to effectively and efficiently utilize the funding that has been granted and to create greater usability of the facility over an extended period of time.

Con:

- None.

The budget amendment in the amount of $839,917 reflects funding from the Tourism Development Authority and revenue from the US Cellular sponsorship agreement. There are no additional City funds being budgeted as this time. It is anticipated that $100,000 in City pay-go funding will be included in the FY 2013-14 CIP for this project.

Staff recommends approval of 1) a resolution authorizing the City Manager to execute a change order with Brantley Construction Co., LLC to add the alternate bid items (described

above) to the contract awarded on February 15, 2013 up to the amount of $2,378,107 plus a 10% contingency for the purpose of continuing the current phase of U.S. Cellular Center renovations; and 2) a resolution to amend the Professional Services contract with Betsch Associates by $55,600 for the planning and design of the Mezzanine level improvements; and 3) a budget amendment in the amount of $839,917 from TDA and US Cellular sponsorship revenue to provide sufficient budget authorization for all contracts and expenses that are anticipated prior to June 30, 2013.

**RESOLUTION BOOK NO. 35 - PAGE 249**
**ORDINANCE BOOK NO. 28 -- PAGE 186**

**J. RESOLUTION NO. 13-74 - RESOLUTION TO MAINTAIN AND SUPPORT THE CURRENT INTEGRITY AND FUNDING FOR THE PARKS AND RECREATION TRUST FUND**

**RESOLUTION BOOK NO. 35 - PAGE 246**

**K. RESOLUTION NO. 13-73 - RESOLUTION AMENDING THE 2013 CITY COUNCIL MEETING SCHEDULE TO (1) ADD A BUDGET WORKSESSION ON APRIL 23, 2013, AT 3:00 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF CITY HALL; (2) CANCEL THE SPECIAL MEETING TO RECEIVE THE CHARLOTTE STREET COMPREHENSIVE TRAFFIC STUDY REPORT; (3) CANCEL THE APRIL 30, 2013, COMMUNITY MEETING; AND (4) ADD A COMMUNITY BUDGET MEETING IN SOUTH ASHEVILLE ON APRIL 18, 2013, AT 6:00 P.M.**

Councilman Pelly moved to amend Resolution No. 13-73 to add a community budget meeting in south Asheville on Thursday, April 18, 2013, at 6:00 p.m. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 35 - PAGE 245**

**L. RESOLUTION NO. 13-75 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT THE GRANT AWARD OFFER FROM THE US ECONOMIC DEVELOPMENT ADMINISTRATION FOR THE CRAVEN STREETS IMPROVEMENT PROJECT**

Summary: The consideration of a resolution authorizing the Mayor to accept a US Economic Development Administration grant award in the amount of $1,122,401 for the Craven Streets Improvement Project, and to authorize the City Manager to sign any additional documents required to execute the grant.

On April 5, 2012, New Belgium Brewing announced they would build an east coast expansion brewery in Asheville. On June 12, 2012, Council authorized the City Manager to executive an economic development incentive agreement, and to sign a Memorandum of Understanding (MOU) with New Belgium Brewing. The MOU summarizes the commitment of the City to perform or partner on performing infrastructure improvements that support the construction and operation of New Belgium's manufacturing and distribution facility. A funding sources and uses table included as Exhibit C of that MOU outlined the City's request for funding from the US Economic Development Administration's Public Works Assistance program for up to fifty percent of the total infrastructure improvements costs.

On March 28, 2013, the EDA issued a grant award offer of $1,122, 401 to the City of Asheville. These funds can be used for eligible components of the City's Craven Streets Improvement Project, the name for the public infrastructure investments the City is currently

designing and will construct in coordination with New Belgium Brewing's $175,000,000 private Craven Street investment.

In summary, the funds will enable the City to more cost effectively perform the following work:

- Almost 3000 linear feet of multimodal roadway improvements, including widening, resurfacing, bike lanes, sidewalk, and regional stormwater management on Craven Street
- Re-engineering of turning radius at five points intersection at Lyman Street and Roberts to accommodate commercial truck traffic
- Safety and flow improvements at Hazel Mill and Craven Street via road realignment and rebuild
- Low impact development style public parking lot that supports operation of the tasting room, and provides wayfinding, parking, and access to the northern end of the French Broad River Greenway Connector
- Creation of riverfront greenway connector to support further multimodal efforts and support the implementation of the City's master plans and policies.
- Upgrade of almost 3000 linear feet of inadequate water line.

The acceptance of this award directly addresses objective one under goal two of the Fiscal Responsibility section in the Strategic Operating Plan: Leverage internal and external partnerships for pursuing capital improvements and infrastructure projects.
It also supports the following Council goals: Green and Sustainable - Asheville as the southeastern leader in clean energy and environmental sustainability (by implementing LID technologies and inducing private investment by industry leaders in sustainability); Job Growth and Community Development - by promoting sustainable, high density infill growth, and supporting the riverfront redevelopment partnership; and Multimodal Transportation- by creating a partnership for investments in greenway and sidewalk infrastructure, including cost sharing options.

Pros:

- Accepting this award will reduce the amount of funds needed to implement these improvements by over a million dollars.
- Accepting this award will cement an active partnership with the US EDA on the development of jobs in the Asheville area.

Cons:

- Accepting this award requires the City to perform additional reporting and administrative functions in order to comply with federal grant requirements.

Staff is not requesting that Council take action on a budget amendment at this time. Staff will come back to Council at a later date with a budget amendment that packages all outside funding offered as part of this project, which is expected to include funds from US EDA, RiverLink via the Clean Water Trust Fund, and North Carolina's Golden Leaf Foundation, as well as City of Asheville funding.

City staff recommends City Council adopt the resolution to authorize the Mayor to sign and accept the award offer from the US EDA.

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Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Bothwell moved for the adoption of the Consent Agenda, as amended. This motion was seconded by Councilman Davis and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. ASHEVILLE AREA RIVERFRONT REDEVELOPMENT COMMISSION UPDATE

Ms. Pattiy Torno, Chair of the Asheville Area Riverfront Redevelopment Commission, briefed Council on their activities of the past year and goals for the upcoming year.

On behalf of City Council, Mayor Bellamy thanked Ms. Torno for her leadership and the entire Commission for their dedication.

Fire Chief Scott Burnette updated City Council on four arsons in the last few days and urged the community to come forward with any information they may have concerning these fires.

### B. LEGISLATIVE & WATER UPDATE

**RESOLUTION NO. 13-77 - RESOLUTION OPPOSING HOUSE BILL 488 REQUIRING TRANSFERS OF CERTAIN WATER SYSTEMS**

Deputy City Manager Jeff Richardson highlighted for Council some legislative issues of interest as follows: House Bill 488 - Regionalization of Public Utilities; House Bill 252 - Asheville Transfers; House Bill 224 - Asheville Extraterritorial Jurisdiction and Annexation (Asheville only); Senate Bill 363 - Business Tax Reduction and Reform; Senate Bill 394 - Lower Tax Rates for a Stronger North Carolina Economy; House Bill 418 - Park Authority; and Senate Bill 612 - Regulatory Reform Act of 2013.

City Attorney Oast presented Council with a proposed resolution opposing House Bill 488 regarding transfers of certain water systems.

City Manager Jackson reported on his trip to Raleigh earlier that day in which he heard House Bill 488. He was allotted 6 minutes to make remarks, which he emphasized that we have put business and citizens first in managing the water system. We have managed the water system since 2005 like a business and put $70 Million into the system to upgrade the infrastructure, plants and lines in order to provide a high high quality water supply. We have made significant consistent and efficiency improvements to our system. This proposal would not create productivity and efficiency savings for our ratepayers. We are running a top rate system that is meeting our customers' needs. The outcome of the vote was 18-10 (largely along partisan lines) - it goes to the House tomorrow. His comments were also cause for the committee to task the bill drafting staff to revisit the way the bill is written to be a general bill and to prepare potential amendments and revisions on the floor. City Manager Jackson also noted that House Bill 488 allows for privatization of the administration of a water system.

Regarding Senate Bill 612, Mayor Bellamy noted that we still need to look at federal legislation because the reason we have a stormwater utility today is because it was an unfunded mandate. Mr. Richardson agreed and said that we are continuing to monitor a total of 16 bills.

Mayor Bellamy did not support House Bill 488 offered up for consideration in the House. She agreed with the concerns expressed by other members of the Committee from Wake County about state-wide impacts, noting this is not best management practices nor is it a good bill.

In response to Councilman Smith, City Manager Jackson said that if the impact of the state bills are reduced from $6 Million to a lower number we will adjust accordingly. The point is

to hear from citizens, weigh options and then when we have the April 23 budget worksession, staff will be looking for specific direction so we can finalize the recommended budget.

Councilman Hunt moved the adoption of Resolution No. 13-77. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35 - PAGE 250**

**IV. PUBLIC HEARINGS:**

**A. CONTINUATION OF CONSIDERATION OF AN AMENDMENT TO THE CONDITIONAL ZONING FOR WEIRBRIDGE VILLAGE LOCATED ON HENDERSONVILLE ROAD, LEGACY OAKS PLACE AND RACQUET CLUB ROAD TO ALLOW FOR THE INSTALLATION OF MENU BOARDS ON A COMMERCIAL OUTPARCEL**

**ORDINANCE NO. 4177 - ORDINANCE TO AMEND THE CONDITIONAL ZONING FOR WEIRBRIDGE VILLAGE LOCATED AT HENDERSONVILLE ROAD, LEGACY OAKS PLACE AND RACQUET CLUB ROAD TO ALLOW FOR THE INSTALLATION OF MENU BOARDS ON A COMMERCIAL OUTPARCEL**

Mayor Bellamy said that the public hearing on this matter was held on March 26, 2013, and continued to this date in order to have a full Council present.

Councilman Bothwell said that we need to enforce the sign ordinance and felt it was bad policy to continually grant variances. If Council feels that it would be better to have two menu boards for drive throughs in the future, Council should consider that amendment. He felt that the applicant should abide by the current rules in place. Again, we need consistency in enforcement.

In response to Councilman Hunt, Urban Planner Julia Fields said that when the sign ordinance was adopted over 15 years ago, the prototype for drive through restaurants was a single ordering station. In the last 2-3 years, that prototype has changed and people have been updating their drive throughs or building new ones. Again, at the time the sign ordinance was adopted, having two ordering stations was not anticipated. There is an interest in amending the ordinance recognizing that prototypes have changed and staff will bring that amendment forward to Council. It is her understanding that there have been two instances where the Board of Adjustment has granted variances for the use two menu boards on a parcel.

Councilman Hunt noted that the decision about whether or not there should be a drive through restaurant on this site was made in 2006. He was not a fan of sprawl development or fast food drive throughs and did not wish to see a proliferation of high traffic across the City, but in terms of equity and fairness and history, he could support the second menu board.

When Councilman Pelly asked if public comment would be allowed, Mayor Bellamy noted that the public hearing was held and is normally only opened up for new information, but would leave it up to Council on whether they would be interested in hearing more public comment.

Mr. Mack Cox, former president of Crowfields for 2005-06, said that Crowfield's complaint back in 2006 was density. At this time their problem is traffic. Mr. Pulliam did offer and continues to offer the access. Crowfields did not accept that access back in 2006 because of liability concerns - they do not want anyone to get hurt in their development. There are two lakes and several streams on Crowfields property and the Pulliam development has no age limit on who accesses their property (including children). They are pleased with that is currently on the developer's property. He asked for Council to give Crowfield residents consideration as they

want to continue their lifestyle. City staff will be meeting with Crowfield residents regarding their traffic concerns.

Mayor Bellamy stated that she has read the minutes of the public hearing and it seems that the concern of Crowfields centered around access for Crowfields to safely leave their facility. She understood that the residents of Crowfields will be voting as a body on whether or not to accept the access to the traffic signal offered by Mr. Pulliam. She agreed that we need to amend our sign ordinance.

Councilman Pelly said that since Crowfields opened in 1972, long-time residents have seen the scale and volume of traffic along Hendersonville Road increase. The immediate issue is about the sign ordinance; however, the Crowfield residents believe the cumulative effect of development surrounding their neighborhood is impacting their quality of life. When issues come before Council, that is one way they can make that point known. To the residents, he felt we need to find a long-term solution. He was glad that City staff will be meeting with the residents to hopefully provide them with safe egress for residents leaving Crowfields. He was also hopeful that there will be a reconsideration of the access offer extended by Mr. Pulliam.

When Councilman Pelly felt that Crowfields has not been treated fairly over the years, Mayor Bellamy disagreed. One issue that Crowfields has expressed concern with was stormwater and the City spent a lot of money dealing with that issue for them. We felt the access offered in 2006 would address their concerns regarding access. The City has responded to the issues which they have control over. The City cannot be held accountable if Crowfields chooses not to accept an easement that will make their egress easier.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hunt found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4177 to amend the conditional zoning for Weirbridge Village to allow for the installation of menu boards on a commercial outparcel. This motion was seconded by Councilman Davis and carried on a 5-2 vote with Councilman Bothwell and Councilman Pelly voting "no".

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**B. PUBLIC HEARING TO CONSIDER THE REZONING OF 10 OLD SHOALS ROAD FROM HIGHWAY BUSINESS DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT**

Due to an error in legal advertising, this public hearing will be held on April 23, 2013.

**C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE APPROVED CONDITIONAL ZONING MASTER PLAN FOR HUNT HILL APARTMENTS, LOCATED AT 56 HUNT HILL PLACE**

Due to an error in legal advertising, this public hearing will be held on April 23, 2013.

**D. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE ASHEVILLE MARKET, LOCATED AT 4 SOUTH TUNNEL ROAD TO REDEVELOP AN EXISTING RETAIL CENTER AND CONSTRUCTION OF A NEW BUILDING, AND A MODIFICATION REQUEST TO LANDSCAPE REQUIREMENTS**

Due to an error in legal advertising, this public hearing will be held on April 23, 2013.

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## V. UNFINISHED BUSINESS:

### A. ASHEVILLE DOWNTOWN IMPROVEMENT DISTRICT INC.

At the BID Board's request, this item has been pulled from consideration at this time.

### B. RESOLUTION ADOPTING A LIVING WAGE FOR FULL- AND PART-TIME CITY EMPLOYEES AND GENERAL SERVICE CONTRACTS $30,000 AND ABOVE

At City staff request, it was the consensus of Council to postpone this item until May 14, 2013.

## VI. NEW BUSINESS:

### A. BOARDS & COMMISSIONS

Regarding the Greater Asheville Regional Airport Authority, the following individuals applied for the vacancy: Albert Anderson, Bradley Cain, Julian Jones, Aixa Wilson, Ken Hawkins, Charles Larrick, John Hayler, George Lycan and Grant Osborne. In addition, two late applications received were from Douglas Tate and Phillip Kelley. It was the consensus of City Council to interview Grant Osborne, Douglas Tate, Phillip Kelley, Albert Anderson, John Hayler and George Lycan.

Regarding the Citizens-Police Advisory Committee, the following individuals have applied for the vacancy: Karl Katterjohn, Fred Cooke, Scott Steele and Grant Osborne. Because the vacancy is for a south representative and only one applicant from the south applied, it was the consensus of Council to re-advertise.

Regarding the Neighborhood Advisory Committee, the following individuals with the 28803 or 28704 zip code have applied for the vacancy: Teddy Jordan, Aixa Wilson Spencer Hardaway, Neil Barrett, Amy Evans and Grant Osborne. It was the consensus of City Council to interview Amy Evans and Spencer Hardaway.

**Multimodal Transportation Commission**

Executive Director of Public Works and Multimodal Transportation Cathy Ball updated Council on the possible creation of a Multimodal Transportation Committee which will eliminate the formal Council appointed Greenway Commission and Transit Commission.

At the February 2013 Boards and Commissions meeting, staff presented a model for combining/augmenting various transportation and neighborhood related boards by forming a Multimodal Transportation Commission.

Since then staff and/or Council members have met with the various boards and commissions and have tweaked the initial recommendations. After additional discussions, and after the Boards & Commissions Committee meeting on April 9, it was the consensus of staff and the Boards & Commissions Committee that the membership of the Multimodal Transportation Commission be as follows: 3 members of the Transit Commission (which will now be the Transit subcommittee), 3 members of the Greenway Commission (which will now be the Greenway subcommittee) and 3 members of the Bike and Pedestrian Task Force, with 1 ex-officio non-voting member from the Planning & Zoning Commission, 1 ex-officio non-voting member from the Neighborhood Advisory Committee and 1 ex-officio non-voting member from the Sustainable Advisory Committee on Energy & the Environment. Those names will be provided to City Clerk

Burleson to include in the resolution appointing members, noting that City Council will have the ultimate authority to endorse those members.

The Transit Commission and the Greenway Commission discussed the roles of the sub-committees. While the subcommittees will receive technical support and staff attendance at meetings, they would not staff the meetings in terms of taking minutes, preparing the agendas, etc. The Greenway Commission has requested that Council consider that they have dual relationships with the Parks and Recreation Advisory Board and the Multimodal Transportation Commission. They requested a relationship with the Parks and Recreation Advisory Board for the purpose of making recommendations on the aesthetics of greenways, such as benches and lighting.

In meeting with the Transit Commission and the Greenway Commission, there were some strong suggestions about the process for appointments on the sub-committees and the Multimodal Transportation Commission. The current members of these commissions had concerns over having a balanced sub-committee if there was no structure. Staff recommendations address their concerns.

This action would comply with one of Council's Strategic Goals by supporting multimodal transportation planning.

Pros:

- Compliments the organizational alignment of the organization.
- Reduces the number of Council Appointed Commissions by one.

Con:

- None.

Because this is an update only, staff recommended that (1) an ordinance establishing the Multimodal Transportation Commission be placed on the May 14 agenda; (2) ordinances repealing the Transit Commission and the Greenway Commission be placed on the June 11 agenda; and (3) a resolution appointing members to the Multimodal Transportation Commission be placed on the June 11 agenda with an effective date of July 1, 2013.

Councilman Hunt understood that once the ordinance creating the Multimodal Transportation Commission is adopted, the Greenway Commission and the Transit Commission ordinances would then be repealed. He felt that when the Multimodal Transportation Commission is created the Greenway subcommittee and Transit subcommittee may not have traction to remain in existence. He totally supported the initial recommendations by the Greenway Commission, Transit Commission and Bike & Pedestrian Task Force; however, was uncertain about having to rely on the then-subcommittees to make a recommendation for a vacancy is troubling. He felt that was too much reliance on the existence of subcommittees. He supported flexibility and less structure by allowing the Multimodal Transportation Commission the flexibility to create subcommittees that they feel are important. He suggested language in the ordinance that states that the Multimodal Transportation Commission has the authority to designate subcommittees that they feel are important.

Ms. Ball said that she has met with the Chairs and members of the Transit Commission, Greenway Commission and Bike & Pedestrian Task Force to address the issue of making sure that the subcommittees exist and do provide meaningful input to the City in making decisions. For example, if the City has a Transit subcommittee, there are several federal requirements that must be met in order for the City to receive funding.

Ms. Ball further explained that after the first year as positions become vacant on the subcommittees (with the exception of the Bike and Pedestrian Task Force), the Transit and Greenway subcommittee members would be appointed by the Multimodal Transportation

Commission with applicants submitting their applications to the Multimodal Transportation Commission. The Multimodal Transportation Commission would then appoint the members to the subcommittees so we continue to make sure those groups are balanced. Some concern expressed was that if people are not appointed to a subcommittee, they don't tend to regularly show up or give as good of input. When the ordinance is drafted, staff will try to include that structure so that people feel comfortable that that role is not being diminished.

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

**Closed Session**

At 6:49 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 7:38 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Pelly and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:38 p.m.

Magdalen Bowlson
CITY CLERK

MAYOR

Wednesday – April 18, 2013- 2:00 p.m.
Charles T. Koontz Intermediate School
305 Overlook Road

Community Budget Meeting

Present: Mayor Terry M. Bellamy, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith (arrived at 6:20 p.m.); City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Esther E. Manheimer

**Community Budget Meeting**

Mayor Bellamy said that this meeting is the second opportunity for City staff to present to Council and the public budget challenges for the upcoming year and to outline fiscal realities the City may face in light of pending legislation action by the North Carolina General Assembly. The first community budget meeting was held on April 3, 2013.

Executive Director of Finance & Strategic Planning Lauren Bradley provided Council with financial context and estimated impact of introduced legislation on the multi-year budget plan. She also provided suggested alternatives to offset the revenue losses - service impacts, trade-offs and tough decisions.

Using a PowerPoint, she explained that Asheville has been diligently responding to a financial crossroads (1) Asheville has been experiencing a structural imbalance in the rate of growth in revenues and expenditures. Expenditures are growing at a faster rate (as much as five times faster) than revenues; (2) Real estate growth has been minimal, and property tax revenue is unlikely to grow significantly in the near future. At the same time, Asheville's share of sales tax revenue has been declining. A lack of access to other revenue sources intensifies the effects of property and sales tax revenues on Asheville's financial structure; (3) Despite the recession and relatively tame inflation, many basic costs continue to go up for local governments. These costs include employee compensation and healthcare, fuel, utilities and equipment; (4) As a regional hub for the western portion of the state and a tourist destination, Asheville's services and infrastructure support a broad population. While the interdependency of Asheville and the surrounding area is critical to the region's economy, the property tax base supports majority of these needs; and (5) Asheville has been cutting its budget for several years, and this trend is reflected in deferred capital improvements, reductions in force, salary freezes and other cost-saving measures. While fiscal constraint will continue to be required, capturing additional savings will become an increasingly elusive target. For instance, Asheville is on a 65-year resurfacing cycle for streets when the recommended cycle is 20 years. City employee compensation was frozen for three years. Vehicle replacement is on an 18-year cycle when the industry standard is 6-10 years.

Asheville has been developing a fiscally responsible, long-range approach to financial management in Fiscal Year 2014 (1) At the beginning of the budget process, Asheville identified the need to close a $2.2 million difference between projected revenues and expenditures. A plan was developed to balance the budget by freezing positions, reducing operating line items and making modest adjustments to fees while avoiding a property tax rate increase for ongoing operations; and (2) At the same time, Asheville developed a Economic Development and Community Investment Initiative designed to address the rate of revenue growth in the city. This strategy called for enhancing infrastructure investment to support redevelopment in targeted areas, business development and job growth with a focus on the River Arts District and Downtown. Projects considered within that strategy included RADTIP, multi-modal improvements in the South Slope area, greenway development, increased allocations to affordable housing development, the Eagle Market Place project, and the Asheville Art Museum renovation project. Services proposed by the BID were also considered in this strategy.

Asheville serves as an important regional hub for economic development, jobs and recovery from the recession: (1) The economic interdependency between Asheville, Buncombe County and the surrounding region has an impact on the lives of more than 1.3 million citizens living in 23 counties, an area of about 11,000 square miles (roughly the size of the state of Massachusetts). Asheville's economic conditions impact almost a quarter of counties in the State; (2) The Asheville-metro area led the state with 3.6% job growth in year-over-year employment statistics (from Jan. 2012-Jan. 2013, according to the NC Justice Center). Also in that year Asheville had the third largest share of the state's overall employment growth. The metro areas of Asheville, Raleigh and Charlotte together accounted for more than 2/3 of the state's job growth. She previewed a table which showed a two-year comparison of job growth across the state, where the Asheville metro area follows only Charlotte and Raleigh; and (3) These are promising figures that show signs of a recovering economy in Western North Carolina. Cities' ability to invest in regional infrastructure or critical services supports this type of economic growth. Without it, cities will be faced with two decisions – to raise taxes or to forego regional investments that support jobs and business growth – both of which are negative for North Carolina's economy.

In the last several weeks, State legislation has been introduced that may have an impact on Asheville's financial forecast. It is important to note that most of these bills have not yet become law, and they may change as they move forward. She reviewed a chart that presented an estimate on the cumulative financial impact of proposed legislation based on noted assumptions. Much remains uncertain about proposed legislation at this time, and so this chart represents our best estimates given what we know today. Asheville's projections have changed since April 3 and are expected to continue to evolve as the legislative process moves forward.

Regarding budget balancing strategies (1) The estimated impact of current legislation takes the difference between Asheville's revenues and expenditures from $2.2 million to $4.9 million in FY 14 (-$2.2 million + -$2.7 million operating impact from legislation); (2) The table below illustrates the types of service reductions that would be required to address the financial forecast solely on the expenditure side. The alternative to this level of service reductions is to raise property tax rates; (3) One penny on the tax rate generates about $1.1 million in revenue; and (4) Legislation has been introduced to enable the consolidation of City and County Parks and Recreation services and facilities. Asheville will continuing to evaluate this proposal.

| **Expenditure Reductions** | | **Service Impact** |
|---|---|---|
| Defer Infrastructure & Equipment | $ 1,000,000 | Defer contracted services for Capital Maintenance of building, infrastructure, equipment |
| Police Reductions | $ 500,000 | Reduce patrol in Downtown |
| Fire & Emergency Reductions | $ 500,000 | Close fire station |
| Parks, Rec & Cultural Arts Reductions | $ 1,500,000 | Contract out Cultural Arts, eliminate festivals, restructure management of WNC Nature Center, restructure adult & youth athletics, reduce hours or close some recreational facilities |
| Reduce Street & Sidewalk Maintenance | $ 500,000 | 25% decrease in paving & maintenance |
| Reduce Transit Service | $ 500,000 | Eliminate Saturday service |
| Reduce Affordable Housing Programs | $ 250,000 | Reduce loans for development projects |
| Reduce Administrative & Support Positions | $ 600,000 | Finance, Admin, Human Resources, Information Technology Services, Business Support |
| Other | | |

| Revenue Enhancements | New Revenue | Examples |
|---|---|---|
| Property Tax Increase of 1 cent/ per $100 of property value = | $ 1,100,000 | $200,000 home = $20 increase in property taxes, $400,000 home = $40 increase, $600,000 home = $60 increase |
| Property Tax Increase of 2 cent/ per $100 of property value = | $ 2,200,000 | $200,000 home = $40 increase in property taxes, $400,000 home = $80 increase, $600,000 home = $120 increase |

The changes in the forecast will likely require deferring capital maintenance, economic development initiatives and enhanced investment. If the estimated financial impact is realized, Asheville would lose the flexibility to consider increasing investment in the Economic Development and Community Investment Initiative via an enhanced capital improvement plan. Projects would have to be deferred unless other sources of revenues are identified. Under this scenario, a tax rate for a Business Improvement District has been deferred in consideration of city-wide service reductions and city-wide tax rate increases.

Staff recommends scheduling an additional budget work session on April 23 and extending the budget adoption out to June 11. If the financial forecast is not more certain by that time, another extension can be made for budget adoption to June 25. The budget must be adopted by June 30. Staff would recommend using the extension to gain additional City Council direction on budget balancing strategies in response to the changing forecast.

Asheville is seeking your input on budget priorities by working in small groups on a budget balancing exercise. The group's recommendations will be made by making funding decisions for services as well as proposing revenue increases. As the groups make their decisions regarding the level at which to fund services, they need to ensure that their recommendations are in line with your vision for the City.

Those who did not wish to participate in the budget prioritization were asked to complete a budget prioritization comment form and leave it with staff. Alternatively, they can e-mail comments regarding the budget priorities by visiting www.ashevillenc.gov/budget.

At this time, staff led a facilitated exercise with small groups of citizens demonstrating the decisions and trade-offs involved in balancing the City of Asheville budget given the structural gap and range of options. The groups concluded their exercise and reported reported their top three budget balancing strategies from the expenditure reductions provided by staff and also other budget reduction ideas. This information will be used to inform City Council's decision-making process. Staff will summarize all input and recommendations in a report that will be accessible at www.ashevillenc.gov.

Mayor Bellamy thanked the public for attending and for their participation in the budget prioritization. Because this is an on-going dialogue, as City Council continues in this process, they will strive to keep the public informed, noting on the City's website there is information on the budget process - www.ashevillenc.gov - City Budget.

At 7:30 p.m., Mayor Bellamy adjourned the meeting.

Magdalen Burleson
City Clerk

Mayor

Tuesday – April 23, 2013- 3:00 p.m.
First Floor North Conference Room

Budget Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

Executive Director of Finance and Strategic Planning Lauren Bradley said that since City staff is recommending the budget schedule be extended to (1) add an additional worksession on May 14; (2) present the recommended budget to City Council on May 28; (3) hold the budget public hearing on June 11; and (4) ask for Council to vote on the proposed budget on June 25, she provided City Council with an update on where we are, along with an opportunity for additional feedback.

She reviewed the proposed legislation as of April 2013; budget balancing strategies; and budget balancing considerations (1) financial impact of various items remain uncertain (a) revenue reform proposed by the N.C. General Assembly; (b) disposition of the City's water system; (c) Cultural and Recreation Authority; and (d) impact of property tax rate adjustments to sales tax distribution; and (2) implementing permanent service reductions and re-engineering is challenging when timing and full impact is unclear.

The proposed budget assumptions of the Operating Budget (1) budget Water Fund contribution to central services (a) offset potential loss of contributions by (i) capturing current year savings for fund balance contingency and (ii) deferring expenses until later in the year; and (b) this approach gives the City flexibility to adapt to changing conditions; permanent reductions would have to be considered if the water system is transferred; and (2) reduce revenue projections - offset loss with property tax increase; alternative is to consider additional service reductions.

The proposed Fiscal Year 2014 continuation of the Capital Improvement Program (CIP) (1) the continuation pay-as-you-go CIP is insufficient to meet the City's basic capital maintenance needs (a) assumes reduction in Water Fund's $1.5 million contribution to infrastructure improvements associated with water lines (b) 50% reduction in facility maintenance and roof replacements; and (c); unable to fund basic replacements like traffic controllers and traffic signal poles; (2) the continuation budget for debt-funded projects allows limited ability to invest in infrastructure and strategic economic development projects (a) $10 million in debt capacity is allocated to Hendersonville Road sidewalk project ($825,000) to leverage N.C. Dept. of Transportation funds, Public Safety Radio Infrastructure Replacement Project $6 million), vehicle replacements ($2.4 million) and bridge repair ($500,000), and other infrastructure ($1 million); and (3) targeted investments in infrastructure and capital improvements could help address the revenue side of the City's structural imbalance.

The proposed Fiscal Year 2014 enhanced Capital Improvement Program (1) implementation of enhanced capital improvements and economic development investments will require additional revenue (a) an additional $3 million in the CIP would increase capital maintenance, infrastructure projects and fund economic development CIP including RADTIP and downtown projects; and (b) funding sources could come from a combination of City revenues and other sources; and (2) staff would recommend considering a minimum of an additional $2 million in capital improvements. She then reviewed the tax rate impacts.

The following is policy direction needed: (1) extending the schedule with the proposed budget being presented on May 28; regarding the General Fund Operating Budget, feedback on current assumptions and plans (a) balance initial difference between revenues and expenditures with changes to services, fees and WNC Nature Center partnership; (b) decrease revenue projections by $1 million; offset with property tax increase of 1 penny (alternative to consider service reductions); and (c) maintain Water Fund budget and central service contribution; defer targeted expenses should disposition change; and (3) Regarding the General Fund Capital Improvement Program, further discussion about the Capital Improvement Program at the May 14 worksession.

After discussion about when the next budget worksession would be held, it was the consensus of Council to add a budget worksession on Friday, May 17, 2013, (not on May 14) at 10:00 a.m. in the First Floor North Conference Room of City Hall in order to provide further direction to City staff on building the budget. Each Council member voiced their opinion on some of the balancing strategies, along with requests for further information, i.e., what an across-the-board cut of 4-5% of all City departments would look like, and a broader range of additional options for cost savings.

It was the consensus of Council to extend the budget schedule as outlined above by Ms. Bradley, with replacing the suggested May 14 budget worksession with the budget worksession being held on May 17.

At 4:27 p.m., Mayor Bellamy recessed the meeting until the 5:00 p.m. formal meeting.

Tuesday – April 23, 2013- 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance, and the Song O'Sky Chorus of Sweet Adelines International sang God Bless America.

**INVOCATION**

Mayor Bellamy gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING APRIL AS "PARKINSON'S DISEASE AWARENESS MONTH"**

Councilman Bothwell read the proclamation proclaiming April, 2013, as "Parkinson's Disease Awareness Month" in the City of Asheville. He presented the proclamation to Nancy and Jim Hall who briefed City Council on some activities taking place during the month.

**B. PROCLAMATION PROCLAIMING APRIL 21-27, 2013, AS "ADMINISTRATIVE PROFESSIONALS WEEK"**

Mayor Bellamy read the proclamation proclaiming April 21-27, 2013, as "Administrative Professionals Day" in the City of Asheville. She presented the proclamation to Ms. Mary Ann Schiller, President of the Land of the Sky Chapter of the International Association of Administrative Professionals, who briefed City Council on some activities taking place during the day.

**C. PROCLAMATION PROCLAIMING MAY AS "FOSTER CARE APPRECIATION MONTH"**

Councilman Smith read the proclamation proclaiming May, 2013, as "Foster Care Appreciation Month" in the City of Asheville. He presented the proclamation to Ms. Tara Foster, representing the Buncombe County Dept. of Human Services, who briefed City Council on some activities taking place during the month.

**D. PROCLAMATION PROCLAIMING APRIL AS "FAIR HOUSING MONTH"**

Councilman Davis read the proclamation proclaiming April, 2013, as "Fair Housing Month" in the City of Asheville. He presented the proclamation to Mr. Richard Boulden, representing the NCHRC Agency Council, Ms. Sarah Nunez, ABCRC Executive Director, and Ms. Robin Merrell, Managing Attorney at Pisgah Legal Service, who briefed City Council on some activities taking place during the month.

**E. PROCLAMATION PROCLAIMING MAY AS "MOTORCYCLE AWARENESS MONTH"**

Mayor Bellamy read the proclamation proclaiming May, 2012, as "Motorcycle Awareness Month" in the City of Asheville. She presented the proclamation to Mr. Roger Coleman, representing the Concerned Bikers Association, who briefed City Council on some activities taking place during the month.

**II. CONSENT AGENDA:**

At the request of City staff, it was the consensus of Council to add a resolution amending the City Council 2013 meeting schedule to add a budget worksession on May 17, 2013, at 10:00 a.m. in the First Floor North Conference Room in City Hall.

**A. APPROVAL OF THE MINUTES OF THE BUDGET WORKSESSION/TOWN HALL MEETING HELD ON APRIL 3, 2013, AND THE REGULAR MEETING HELD ON APRIL 9, 2013**

**B. RESOLUTION NO. 13-78 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CANA CONSTRUCTION FOR THE WATER SERVICE RENEWALS PROJECT NORTH/EAST**

Summary: The consideration of a resolution by City Council authorizing the City Manager to enter into an agreement with CANA Construction for the bid amount of $212,375 plus a contingency amount of $21,240 for a total in the amount of $233,615 for the Water Service Renewals Project North/East.

On March 1, 2013, the Water Resources Department issued a Request for Bids for the Water Service Renewals Project North/East. The scope of the project is to renew existing water services that have been identified as sub-standard as part of the department's ongoing

Automated Meter Reading (AMR) project in the North and East parts of the Water Distribution system. There will be 161 water services renewed as part of this project, including new meter boxes, new meter setters, new connections to the existing house lines, and approximately 2,850 Linear Feet of copper line.

On March 26, 2013, Water Resources received five (5) bids for the project. Companies responding were:

1. CANA Construction – Waynesville, NC; $212,375.00
2. Buckeye Construction Company, Inc. – Canton, NC; $299,034.00
3. Patton Construction Group, Inc. – Asheville, NC; $299,330.00
4. Huntley Construction Co. – Asheville, NC; $329,213.00
5. T & K Utilities, Inc. – Asheville, NC; $345,825.00

A review team comprised of City staff reviewed these bids and selected CANA Construction as the lowest responsible bidder in the amount of $212,375.00. A contingency amount of $21,240.00 has been added for a project amount of $233,615.00.

This project is part of City Council's strategic plan to maintain and improve city infrastructure and provide local companies with labor opportunities.

Pros:

- Approval of the project will allow Water Resources to renew existing, sub-standard water services to residential houses.
- The project will provide a local company with work for several months.

Con:

- None.

As part of the Automated Meter Reading (AMR) Project, the Water Resources Department has allocated the funds needed for this construction project in the Capital Projects Fund.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with CANA Construction for the bid amount of $212,375 plus a contingency amount of $21,240 for a total in the amount of $233,615 for the Water Service Renewals Project North/East.

**RESOLUTION BOOK NO. 35 - PAGE 256**

**C. RESOLUTION NO. 13-79 - RESOLUTION AUTHORIZING THE CITY MANAGER ENTER INTO AN AGREEMENT WITH HENDERSON COUNTY TO LEASE ONE TRANSIT VEHICLE**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Henderson County to lease one transit vehicle.

As a result of the 2000 Census, the French Broad Metropolitan Area was reclassified from a non-urbanized area to an urbanized area with a population greater than 200,000 persons and now includes municipalities in Buncombe, Haywood, and Henderson counties. After the reclassification, Henderson County's transit system became part of the transit systems operating in the overall urbanized area. The Federal Transit Administration (FTA) named the City of Asheville the designated recipient and as a result, the City of Asheville oversees all of the FTA funding, including reporting, administration and procurement of goods. The City of Asheville and Henderson County have signed a sub-recipient agreement that specifies how the funds are

disbursed. The City of Asheville is accountable to the FTA regarding the use of all FTA funds and owns all the capital items that Henderson County purchases with these funds.

As per Henderson County's request, the City of Asheville ordered a van from a State contract to serve Henderson County's paratransit system, operated by Apple Country Transit. The vehicle is paid with the American Reinvestment and Recovery Act funding.

In order for the County to receive the van, a lease agreement, stipulating the terms and conditions to operate this vehicle, must be signed by both parties as required by FTA.

There is no cost obligation for the City with this action other than staff time to accomplish the task.

This action complies with the current City Council 2011-12 Strategic Operating Plan within the fiscal responsibility focus area by operating the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- The lease agreement is an administrative step required by the FTA that protects the City's interests as designated recipient of Federal funds.
- There is **no** cost obligation for the City of Asheville other than administrative expenses.

Con:

- The City of Asheville is responsible for administrative expenses including staff time to oversee the project for the duration of such, approximately seven years.

There is no direct fiscal impact to the City of Asheville, however the City's cost of administering the project is not recovered.

City staff recommends that City Council approve a resolution authorizing the City Manager to enter into an agreement with Henderson County to lease one transit vehicle.

**RESOLUTION BOOK NO. 35 - PAGE 258**

**D. RESOLUTION NO. 13-80 - RESOLUTION AUTHORIZING NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT FOR THE FINANCING OF FISCAL YEAR 2013 GREEN CAPITAL IMPROVEMENT PLAN PROJECTS AND CALLING FOR A PUBLIC HEARING ON MAY 14, 2013**

Summary: The consideration of an initial resolution authorizing negotiation of an installment financing contract for the financing of Fiscal Year 2013 Green Capital Improvement Plan (CIP) Projects and calling for a public hearing on May 14, 2013.

The current capital improvement plan includes funds previously appropriated by City Council to finance Green CIP Projects, such as LED Streetlight upgrades, a boiler replacement at the Stephens Lee Recreation Center, a boiler replacement at Fire Station #2 and window replacements at Fire Station #7.

The proposed initial resolution asks Council to confirm that it is in the City's best interest to enter into an installment purchase contract with a financial institution to fund these aforementioned Green CIP projects and to provide for a public hearing on these matters. This resolution is a legal formality required by North Carolina General Statutes before the process of securing financing can officially begin.

This action supports the City of Asheville's goal to operate the City to the highest level of fiscal responsibility by enhancing its commitment to infrastructure maintenance and capital improvements.

Pro:

- Allows the City to comply with the legal requirements of the Local Government Commission regarding installment financing and NC General Statutes.

Con:

- There are no cons associated with ensuring that legal requirements have been met before securing financing for the Green CIP projects.

The City will seek to borrow no more than $1,100,000 to finance these projects. The projected annual debt service costs for this will range from $131,450 in Fiscal Year 2014 to $111,650 in Fiscal Year 2023; however, the City will not know the exact interest costs until it receives bids from the lenders. Staff will include funding for the projected debt service in the managers Fiscal Year 2013-14 proposed budget that is being presented to City Council in May.

City staff recommends City Council adopt an initial resolution authorizing negotiation of an installment financing contract and calling for a public hearing on May 14, 2013.

**RESOLUTION BOOK NO. 35 - PAGE 259**

**E. RESOLUTION NO. 13-81 - RESOLUTION WAIVING ALL THE PERMIT FEES ASSOCIATED WITH THE INSTALLATION OF A CANOPY AT PACK SQUARE PARK AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE TOURISM DEVELOPMENT AUTHORITY AGREEMENT GRANT TO ACCEPT THE CANOPY FOLLOWING INSTALLATION, INSPECTION AND ACCEPTANCE**

Summary: The consideration of a resolution waiving all the permit fees associated with the installation of a canopy at Pack Square Park and authorizing the City Manager to execute the Tourism Development Authority (TDA) Agreement Grant to accept the canopy following installation, inspection and acceptance.

The Asheville Downtown Association (ADA) was awarded a grant from the Tourism Development Authority to construct and install a canopy over the stage in Pack Square Park. The amount of the grant is $50,000. The ADA will be responsible for constructing and installing the canopy. Additionally, the ADA must obtain all necessary permits prior to the installation.

Staff is requesting that all the permit fees be waived due given that the City will own the canopy after it is properly installed and inspected. Prior to installation, the design of the canopy will be reviewed by the Downtown Design Review Sub-Committee of the Downtown Commission.

TDA requires the City to sign the award documents stating that they will accept the canopy after it is properly installed and inspected.

This action complies with one of Council's Strategic Goals by encouraging public/private partnerships to provide infrastructure.

Pros:

- The addition of the canopy to the stage provides for more opportunities to have performances in the Park.
- The canopy is not costing the City any capital money.

Con:

- The City will be responsible for the maintenance of the canopy following installation.

The maximum cost of the permits to perform this work is $1,000.

City staff recommends City Council waive all the permit fees associated with the installation of a canopy at Pack Square Park and authorizing the City Manager to execute the TDA Agreement Grant to accept the canopy following installation, inspection and acceptance.

**RESOLUTION BOOK NO. 35 - PAGE 263**

**F. RESOLUTION NO. 13-82 - RESOLUTION SUPPORTING THE ASHEVILLE-BUNCOMBE REGIONAL SPORTS COMMISSION'S EFFORTS TO HOST THE IRON TRIATHLON IN SEPTEMBER 2014**

Summary: The consideration of a resolution supporting the Asheville-Buncombe Regional Sports Commission's efforts to host the Ironman Triathlon in September 2014.

The Asheville-Buncombe Regional Sports Commission (ABRSC) was established through a partnership between Buncombe County, Buncombe County Tourism Development Authority (TDA), and the City of Asheville, with the goal of securing sports related events that provide specific positive financial economic impact to the community. The ABRSC has been contacted by World Triathlon Corporation, the producer of the famous Ironman Triathlon, to gauge interest in the Commission's submittal of a bid to host the Ironman beginning in fall 2014, with the potential for a five year commitment.

The Ironman competition has 2,500 participants engaging in a 2.4 mile swim, a 112 mile bike race, and a 26.2 mile marathon run. Additional activities include an Expo for participants, spectators and the community; a banquet with speaker and awards; and other potential community activities.

The TDA, Buncombe County Commission, and Town of Lake Lure (swimming competition) have passed resolutions of support to be included in the ABRSC Bid Package which must be submitted by April 28th. Several other North Carolina, South Carolina and Virginia communities are expected to submit competing proposals. The Ironman organizers have indicated that communities that are short-listed would receive site visits in May 2013, with contract negotiations in June and an award announcement in July 2013.

In addition to being a substantial room-night and retail sales generator, the demographic profile of an Ironman participant overwhelmingly matches the entrepreneurial target profile of the community.

This action meets numerous City Strategic Plan goals, including creation of collaborative and effective working partnerships between the City of Asheville, the business community, and other key organizations; partnerships in regional economic development strategies; and expansion of partnerships with organizations to achieve common goals, including health and wellness, workforce development, and sustainable Economic Development.

Pros:

- Allows the ABRSC to continue to pursue the award of the Ironman competition
- Provides International promotion of Asheville to a target market segment
- Provides national media coverage of the competition and surrounding events
- Provides a strong connection to the most prominent brand in adventure racing
- Meets the Target Market for Outdoor Sports
- Creates over 10,000-12,000 room nights
- Up to 50% of participants visit the community in advance of the event to train

Cons:

- Requires road and street closures for up to 12 hours in certain locations

- Requires Public Safety support for which the details are still being discussed by staff
- Requires significant volunteer support by ABRSC volunteers

The Buncombe County Tourism Development Authority has pledged $75,000 in financial support and an additional $75,000 in matching funds. Buncombe County has pledged $40,000. Lake Lure has pledged $30,000. The Ironman Triathlon would require significant City Public Safety overtime, which is expected to be approximately $35,000 based on ABRSC's pro forma. City staff has met with ABRSC and continues to review possible ways to assist with the project, potentially through a defined contribution which would be used in the overall Ironman project budget, and then the ABRSC would pay for Public Safety costs with a cap. City funding would be included in the city's 2014-15 budget process. No funding is required now or in the 2013-14 budget.

Staff recommends that City Council pass a resolution supporting the Asheville-Buncombe Regional Sports Commission's efforts to host the Ironman Triathlon in September 2014.

Councilman Davis felt this is a huge economic development initiative and will be a tremendous partnership.

**RESOLUTION BOOK NO. 35 - PAGE 264**

**G. RESOLUTION NO. 13-83 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A UNIT PRICE CONTRACT WITH LAND OF THE SUN INC. D/B/A FLETCHER GRADING CONTRACTORS, FOR THE CHERRY STREET/PEARL STREET/STARNES AVENUE SIDEWALK CONSTRUCTION PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a unit price contract in the amount of $169,313 with Land of the Sun, Inc. d/b/a Fletcher Grading Contractors along with contingency funds to cover any change orders up to the total contract amount of $195,000, for the Cherry Street/Pearl Street/Starnes Avenue Sidewalk Construction Project.

An informal request for bids was issued on March 14, 2013. One proposal was received on April 14, 2013, from Land of the Sun, Inc. d/b/a Fletcher Grading Contractors. They were deemed to have presented a responsive and responsible bid that was within the amount budgeted in the 2012/13 Streets and Sidewalk Maintenance Operating Budget.

The sidewalks to be repaired on Cherry Street and Starnes Avenue were required to obtain a Certificate of Appropriateness from the Historic Resource Commission which was granted earlier this year.

The project generally consists of removal of deteriorated existing sidewalks and installing new ADA compliant sidewalks along with associated apparatuses.

This action complies with the City Council Strategic Operating Plan in that will be a step in fulfilling Objective 1 of the Multimodal Transportation Plan in maintaining pedestrian infrastructure.

Pros:

- Updating deteriorated infrastructure.
- Improve multimodal transportation.

Cons:

- Will have some impact on automobile and pedestrian traffic due to lane and sidewalk closures.

- Project management and contract administration will consume staff time and City funds.

Funding for this contract is already included in the Fiscal Year 2012-13 Public Works sidewalk maintenance budget.

Staff recommends City Council to authorize the City Manager to execute a unit price contract with Land of the Sun, Inc. d/b/a Fletcher Grading Contractors in the amount of $195,000 which includes a 15% contingency amount to cover any changes or unexpected occurrences , for the Cherry Street/Pearl Street/Starnes Avenue Sidewalk Construction Project.

**RESOLUTION BOOK NO. 35 - PAGE 265**

**H. RESOLUTION NO. 13-86 - RESOLUTION AMENDING THE CITY COUNCIL 2013 MEETING SCHEDULE TO ADD A BUDGET WORKSESSION ON FRIDAY, MAY 17, 2013, AT 10:00 A.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF CITY HALL**

**RESOLUTION BOOK NO. 35 - PAGE 268**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Pelly moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

## III. PRESENTATIONS & REPORTS:

**A. SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT UPDATE**

Mr. Duncan McPherson, Chair of the Sustainable Advisory Committee on Energy & the Environment, briefed Council on their activities of the past year and goals for the upcoming year.

On behalf of City Council, Mayor Bellamy thanked Mr. McPherson for his leadership and the entire Committee for their dedication.

**B. LEGISLATIVE & WATER UPDATE**

**RESOLUTION NO. 13-85 - RESOLUTION IN SUPPORT OF EARLY VOTING AND COLLEGE STUDENTS' RIGHT TO VOTE AND PARTICIPATE IN OUR COMMUNITY**

**RESOLUTION NO. 13-87 - RESOLUTION IN SUPPORT OF SENATE BILL 724 AND HOUSE BILL 685 PROHIBITING IMITATION CONTROLLED SUBSTANCES**

Deputy City Manager Jeff Richardson highlighted for Council the following legislative issues of interest: House Bill 488 - Regionalization of Public Utilities; House Bill 252 - Asheville Transfers; House Bill 224 - Asheville Extraterritorial Jurisdiction and Annexation (ratified); House Bill 568 - Asheville Deannexation; Senate Bill 363 - Business Tax Reduction and Reform; Senate Bill 394 - Lower Tax Rates for a Stronger North Carolina Economy; House Bill 962 - Municipal Sales Tax; Senate Bill 952 - Delay Sales Tax Distribution Change Effective Date; House Bill 428 -

Park Authority; Senate Bill 612 - Regulatory Reform Act of 2013; House Bill 664 - Cell Tower Deployment Act; and House Bill 659 - County and City Ethics.

Mr. Richardson read a resolution in support of Senate Bill 724 and House Bill 685 prohibiting imitation controlled substances. He explained that Senate Bill 724 and House Bill 685 would make the manufacture, possession, sale use, and delivery of certain limitation controlled substances unlawful and urges the members of the General Assembly to support this legislation.

Mayor Bellamy thanked Representative Moffitt for his assistance with House Bill 685.

Councilman Smith moved for the adoption of Resolution No. 13-87. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35 - PAGE 269**

City Attorney Oast then read the resolution in support of early voting and college students' right to vote and participate in our community; and, to urge the North Carolina General Assembly to vote against Senate Bills 666 and 667, to oppose measures that would limit early voting.

Councilman Bothwell moved for the adoption of Resolution No. 13-85. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 35 - PAGE 267**

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER ADOPTION OF THE CONSOLIDATED ACTION PLAN FOR FISCAL YEAR 2013 WHICH SETS OUT THE PROPOSED USE OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP ACT FUNDS**

**RESOLUTION NO. 13-84 - RESOLUTION ADOPTING THE CONSOLIDATED ACTION PLAN FOR FISCAL YEAR 2013 WHICH SETS OUT THE PROPOSED USE OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP ACT FUNDS**

Community Development Director Jeff Staudinger said that this is a public hearing to receive comments regarding the proposed Consolidated Action Plan for Fiscal Year (FY) 2013-2014, which sets out the proposed use of federal Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) funds for the coming fiscal year; followed immediately by Council's consideration of a resolution authorizing submission of this Consolidated Action Plan to the US Department of Housing and Urban Development. This public hearing was advertised on April 12 and 19, 2013.

The City will have available an estimated **$1,056,386** in CDBG funds and **$1,393,962** in HOME funds in the fiscal year beginning July 1, 2013. The City's Housing and Community Development Committee has made recommendations for the use of CDBG funds, which must be used in housing or community development programs in Asheville, and the Asheville Regional Housing Consortium has recommended uses for the HOME funds, which must be used for housing programs within the four-county Consortium area (Buncombe, Henderson, Madison, and Transylvania counties). A total of 19 CDBG and 12 HOME programs are recommended for funding. Allocations are consistent with the proposed Strategic Housing & Community Plan for 2010-2015.

The proposed allocations are estimates, based upon a 10% reduction from last year's entitlement grants due to Sequestration. A final allocation has not yet been released by HUD. Both the HCD Committee and HOME Consortium agreed that if the allocation is no more than 10% different than the estimates, pro-rata adjustments would be made without additional deliberations. If either the CDBG or HOME program allocation to Asheville was greater or less than 10%, the respective recommending bodies would reconvene to make allocation adjustments. Information provided by HUD to date suggests that the HOME allocation will fall within the 10% estimate; but that the CDBG funds may be more than 10% greater than estimated. The HCD Committee is prepared to hold a special meeting if needed.

The CDBG cuts were buffered slightly by the receipt of Program Income, and by the decision to reallocate funds from prior year projects which for various reasons either did not occur or needed less than the originally allocated amount. The estimated CDBG total fund available this year is $157,500 less than last year.

The total estimated HOME funds available this year are $354,823 more than last year. This is primarily because one of the funded projects last year did not come to fruition, and those funds were available this year for reallocation.

Both the Consortium and HCD Committee have recommended that the City retain some program funds for project delivery cost- $26,136 of HOME funds and $15,000 in CDBG funds. This, combined with reserved prior year HOME funds, will enable the Community Development Division to maintain its staffing this year.

If the funded projects receive the funding from other sources necessary to make them possible, HOME funds and CDBG funds will assist in creating or improving 198 housing units and helping an additional 125 households afford housing Consortium-wide. CDBG funds will also benefit almost 2,700 low-income City residents through homeless services, financial counseling, small business assistance, and other needed services. Our CDBG partner agencies leverage $4.00 of other funding for every $1.00 of CDBG funding. Our HOME partners will raise over $20.00 for every $1.00 of HOME funds invested in their projects.

After the public hearing, any comments received will be incorporated into the Plan, as will comments submitted in writing. The plan is due to be submitted to HUD by May 15.

This Annual Action Plan directly supports Council's Strategic Goals of: (1) Affordable: This plan directly supports the City's affordable housing plan, uses innovative public-private partnerships to incentivize affordable housing development, and supports initiatives to end chronic homelessness emphasizing the Housing First model; (2) Green and Sustainable: works with regional partners creating green buildings and energy conservation; (3) Safe: Supports employment and education alternatives for youth from low-wealth neighborhoods; an (4) Job Growth and Community Development: Supports diversified job growth and small business development; promotes sustainable high-density infill growth; and attracts and retains quality employees.

Pros:

- Approval of the Action Plan paves the way for the receipts of over $2,450,000 of HUD funding to the City and region, which will be used to create affordable housing, create jobs, and improve public infrastructure.
- HUD funding will leverage $25,000,000 of additional funding for these projects.
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee and the Asheville Regional Housing Consortium.

Con:

- It is not possible to fund all the applications received, and most of those funded will receive less than the amount requested.

The Action Plan is fully funded from federal CDBG & HOME entitlement grants, unused funds from previous completed projects, and estimated program income. Staff costs to administer the program are also fully paid from federal sources. The funded programs will provide new construction and other economic activity in the City and region, creating and sustaining employment.

Staff recommends approval of the resolution authorizing submission of the City's Consolidated Annual Action Plan for 2013-14 to the U. S. Dept. of Housing and Urban Development.

Mayor Bellamy opened the public hearing at 6:16 p.m. and when no one spoke, she closed the public hearing at 6:16 p.m.

Councilman Davis, Chairman of the Housing & Community Development Committee, spoke in support of the recommendations.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 13-84. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35– PAGE 266**

**B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PALISADES OF ASHEVILLE, LOCATED AT MILLS GAP ROAD, FOR THE CONSTRUCTION OF A 224 UNIT APARTMENT COMPLEX**

**ORDINANCE NO. 4179 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PALISADES OF ASHEVILLE, LOCATED AT MILLS GAP ROAD, FOR THE CONSTRUCTION OF A 224 UNIT APARTMENT COMPLEX**

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

Mayor Bellamy disclosed that she was a Council member during several configurations of the property. City Attorney Oast said that that was not a disqualifying issue.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:18 p.m.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit Palisades of Asheville, located on Mills Gap Road, for the construction of a 224 unit apartment complex.

She said that the applicant is requesting review of site plans for the construction of a 224-unit multi-family apartment complex. This project is considered a Level III review pursuant to Section 7-5-9(a) of the UDO which designates review for residential projects with more than 50 units. Level III projects are reviewed as Conditional Use Permits in the Commercial Industrial District.

The site consists of a 14-acre parcel located on Mills Gap Road, between Hendersonville and Sweeten Creek Roads in South Asheville. The parcel is zoned Commercial Industrial (CI) and is currently vacant. The site is bordered by the Norfolk-Southern Railroad to the east; Community Business II (CBII) and CI-zoned parcels to the west (Earth Fare and retail shopping); Gerber Road and CBII / CI zoning to the north (Gerber Village) and Highway Business zoning to the south (retail uses).

The proposal is to develop a multi-family apartment complex with a total of 224 units. Plans propose a mix of 1-bedroom (72 units), 2-bedroom (108 units) and 3-bedroom (44 units) configurations. There are 10 residential buildings on the site, with a maximum building height of 36 feet. Nine of the ten residential buildings are three-stories and one is two levels. Additional structures proposed include a single-story clubhouse building located at the entrance to the development and three 1-story garages within the site.

Vehicles will access the site from two driveway cuts, both off of Mills Gap Road, on either side of the clubhouse. There is also an interior connection through the western boundary of the site with a deeded easement, into the adjacent commercial development. The applicant is adding a deceleration lane into the site from Mills Gap Road, heading west (right turn in).

As proposed, 26 foot wide two-way private drives circle and bisect the development and include parking on both sides. There are a total of 408 parking spaces (not including spaces within the covered garages). This parking count includes 13 HC-accessible spaces dispersed throughout the site and a small 20 space parking area on pervious pavers. Also, 22 bike parking spaces are distributed among the buildings.

A six-foot sidewalk is provided along the frontage of the property (Mills Gap Road) as well as pedestrian pathways (five feet wide) into and throughout the site.

Landscaping is required for this project and includes street trees, parking lot landscaping, building impact landscaping and tree save area. The applicant is proposing to preserve existing vegetation around the north and eastern perimeters of the site and to apply those as credits for some of the required landscaping.

Fifteen percent of the total lot area is required to be dedicated as open space, which would be 2.1 acres for this site. More than the minimum is provided, with 3.6 acres shown on the plans.

This proposal was approved with conditions by the Technical Review Committee on March 18, 2013. The primary concern discussed pertains to providing an additional emergency

access point, other than the entrances from Mill Gap Road. The existing interior access to the Earth Fare shopping center would suffice if an easement was dedicated. An alternative option would be an easement at the existing driveway (not shown to continue on site plans) through the adjacent property to Gerber Road. The applicant has provided information that an easement exists at that drive connection to the Earth Fare shopping center. Community concern has been expressed about the increased traffic on Mills Gap Road.

The Planning & Zoning Commission discussed this proposal at their meeting on April 3, 2013, and recommended approval (5-0). Several members expressed a desire for the project to align more directly with City goals on incorporating dedicated affordable units.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   This site has been previously graded through its past use and has rubble from demolitions of past buildings as well as fill dirt in areas across the acreage. The subject property is mostly flat with areas of existing vegetation and grades climbing 15-30 feet at the north and northeast edges. The proposed development of the land is compatible with these features in that the buildings and parking areas are focused in the center of the site and those steeper areas around the perimeter incorporate and retain landscaping materials.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The proposed use and development of the land is not expected to injure the value of abutting property. The residential use should complement the commercial activity along Hendersonville Road, which is within a walkable distance and will be an amenity to the residents with many shops and restaurants.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   While there are numerous residential developments existing in the general proximity (west of Hendersonville Road and east of Sweeten Creek Road), the immediate area surrounding this site is primarily commercial. However, as mentioned in the "Recent Zoning Actions" section of this report, there is a similarly-sized residential project approved for development across Gerber Road to the north. The multi-building, multi-family site design is appropriate for this type of location off of a high-volume corridor.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
Elements of the project align with the City's goals and objectives including siting development in an infill location, proposing a density that supports transit and offering rentals as a "workforce" rate.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The site is located in an area supported by transit (S3) and accessible by vehicle. Adequate water supply, police protection, waste disposal and similar facilities are verified during the TRC review process. Associated infrastructure improvements will enhance multi-modal access, emergency protection, waste disposal and water supply.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
Based on the results of a Traffic Impact Study, performed by Mattern and Craig Engineering, this project should not cause an undue burden on the surrounding transportation infrastructure. The project includes a deceleration lane which was recommended by the TIS.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:
- Proposes a density that supports transit (S3 line runs down Hendersonville Road) and is walkable to the bus line (within a tenth of a mile).
- Project location is walkable to commercial retail uses that will be supported by the residents
- Existing vegetation around the perimeter of the site will be preserved.
- Project incorporates pervious pavers into one of the parking areas.

Con:
- Applicant does not propose to dedicate any units for affordable housing.

Staff recommends approval of the project as shown on submitted site plans as it appears to comply with the City's goals and objectives, subject to the Technical Review Committee conditions.

Mr. William Ratchford, owner, briefly spoke in support of the conditional use permit in that the site is perfect for walkability.

Mr. Tom Jones, engineer for the project, showed the existing conditions of the property (Applicant Exhibit 1). He then talked about the master plan of the project (Applicant Exhibit 2), along with showing the landscaping and planned clubhouse (Applicant Exhibit 3) and elevations of a similar project of the owners in Hendersonville (Applicant Exhibit 4). He explained some of the green building techniques, noting that they will keep the existing vegetation where possible, and may even incorporate some of the construction debris into the project. He noted they are not seeking any variances or alternative compliances and urged Council to support this nice project.

In response to Councilman Smith, Mr. Ratchford said that their price point for a one-bedroom is $720, for a two-bedroom $900, and for a three-bedroom $1,000.

After rebuttal, Mayor Bellamy closed the public hearing at 6:29 p.m.

Councilman Bothwell found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4179, granting a conditional use permit for Palisades of Asheville, located on Mills Gap Road, for a 224 unit apartment complex, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10 of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with this ordinance, will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; and (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards. This motion was seconded by Councilman Hunt and carried unanimously.

**ORDINANCE BOOK NO. 28 - PAGE 194**

**C. PUBLIC HEARING TO CONSIDER THE REZONING OF 10 OLD SHOALS ROAD FROM HIGHWAY BUSINESS DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT**

**ORDINANCE NO. 4180 - ORDINANCE TO REZONE 10 OLD SHOALS ROAD FROM HIGHWAY BUSINESS DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT**

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone 10 Old Shoals Road from Highway Business District to Commercial Industrial District. This public hearing was advertised on April 12 and 19, 2013.

He said the subject area for this rezoning petition is about one-sixth of the entire parcel as shown in the Buncombe County Land Records. The portion of the parcel which is proposed for rezoning has dissimilar zoning from the rest of the parcel; in fact the parcel has three separate zoning designations. The zoning district boundaries correspond to tract boundaries shown in recent plats, but recent recombinations of property have assembled what were separate tracts under one PIN, partly zoned RM-16, partly zoned CI, and partly zoned HB. By rezoning the HB portion to CI, the proposed rezoning would (at least partly) be addressing the less than ideal split-zoning situation.

The subject area, roughly quadrilateral in shape, has four zoning districts on its four sides: RM-16(CZ), HB, CI, and Industrial. The proposed rezoning would make the property consistent with the zoning to the north rather than that to the south.

This area was initially zoned by the City in 2009. At that time, the applicant requested HB zoning to allow for a projected retail development on the site. As was acknowledged in the recent conditional zoning to the south (also noted above), the applicant has since decided not to pursue such a development, and instead to add manufactured home sites there and seek new tenants for the building at 10 Old Shoals Road. Had it not been for this request in 2009, the subject area might well have been initially zoned CI.

The HB and CI districts are both considered high impact zoning districts, but there are a handful of uses permitted in CI which would not be permitted in HB which are of interest to the applicant. The likely candidates at this location are light industrial uses, industrial uses, warehousing and storage, and possibly a recycling operation. The applicant has stated: "This is a purely industrial building. It has no heat nor air except in the office/restroom area and really could not be retrofitted for any other purpose. There is also very limited parking."

The most obvious concern with a CI zoning designation would be incompatibility with the residential area to the south, especially since the location of the building leaves limited space available for a landscape buffer. Both the Planning and Zoning Commission and City Council, however, supported the recent conditional zoning of the residential area, knowing there was a high-impact zoning area to the east (under the same ownership), and allowed reduced setbacks and no additional buffering as part of the approval.

Further, the vast majority of the Wellington Estates Park perimeter is already adjacent to CI zoning, so the proposed zoning designation would not be creating an exceptional conflict. In addition, if the facility is occupied by a higher-impact use than the current storage/warehousing use, such as manufacturing, assembly, or processing, such a change would trigger compliance with landscaping standards, including buffers – though alternative compliance would likely be sought, owing to the narrow area between the building's south side and the property line.

At their March 6, 2013, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the request.

As of this writing, staff has received no communications from the public regarding the petition in question.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Is suitable for the subject area and consistent with other adjacent and nearby zoning.
- Would resolve a split-zoning situation.

Con:

- Space available for buffer from adjacent residential area is less than required in UDO.

Staff recommends approval, noting that the difference between the existing zoning district and the proposed district is relatively minor, especially given that the most dissimilar nearby use is already largely surrounded by the proposed district. Additionally, the rezoning would add possible uses for the site, which, if introduced onto it, would require bringing currently non-compliant aspects of the development into compliance.

Mayor Bellamy opened the public hearing at 6:34 p.m. and when no one spoke, she closed the public hearing at 6:34 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hunt found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4180 to rezone 10 Old Shoals Road from Highway Business District to Commercial Industrial District. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 199**

**D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE APPROVED CONDITIONAL ZONING MASTER PLAN FOR HUNT HILL APARTMENTS, LOCATED AT 56 HUNT HILL PLACE**

**ORDINANCE NO. 4181 - ORDINANCE TO AMEND THE CONDITIONAL ZONING TO THE APPROVED CONDITIONAL ZONING MASTER PLAN FOR HUNT HILL APARTMENTS, LOCATED AT 56 HUNT HILL PLACE TO ELIMINATE THE CARROLL AVENUE ENTRANCE**

Urban Planner Julia Fields said that this is the consideration of an ordinance to amend the approved conditional zoning master site plan for Hunt Hill Apartments, located at 56 Hunt Hill Place, to eliminate the Carroll Avenue entrance. This public hearing was advertised on April 12 and 19, 2013.

She said that this is the consideration of an ordinance amending a previously approved plan for apartments located off of Hunt Hill Place and Ardmion Drive, which said amendment reflects a change in access to the development with the elimination of one access point off of Carroll Avenue.

On June 12, 2012, the Asheville City Council approved an amendment to a previously approved (Hunt Hill Place – 2008) conditional zoning petition (to Residential Multi-Family High Density District/Conditional Zoning) for a 180 unit multi-family development. As approved, the development proposed three access points onto the site: Hunt Hill Place; Ardmion Drive and Carroll Avenue. The previously approved (2008) development only provided access off of Hunt Hill Place and Ardmion Drive.

At the time of Council approval the Carroll Avenue access was unconfirmed due to negotiations underway. Since that time, this access point (thorough a church parking lot) is no longer an option. Plans have been revised to indicate the removal of this access to the site. The revised plans also show a reconfiguration of the buildings in the area where the access point was deleted.

In granting approval for this development in June of 2012, the Asheville City Council placed a condition on the approval that read as follows:

> Carroll Avenue access must be completed as shown on the site plan. If that Access cannot be provided, a new traffic impact analysis is conducted and brought back for review by Asheville City Council, prior to proceeding with construction.

An amended traffic impact analysis has been received, reviewed and accepted. This request is for approval of the site plan without the additional access point (Carroll Avenue) and with the reconfiguration to the buildings on the site.

Pros:

- The development that this amendment applies to addresses a number of City of Asheville goals including: pursuing higher density infill, green building, and the provision of affordable housing.
- The amended proposal for the development has been reviewed for traffic impact and safety.
- The amended proposal provides for the same access to the development as was approved in 2008 for the same site and number of units.

Con:

- Three access points would have allowed traffic to and from the site to be spread out a bit more.

Based on the analysis provided in the report, staff finds this request to be reasonable and recommends approval and recommends Council either approve or deny the amendment

requested for Hunt Hill Apartments and move to amend the conditional zoning ordinance for this project in accordance with the amendment presented.

Mayor Bellamy opened the public hearing at 6:36 p.m.

Mr. Chip Kassinger, developer, spoke in support of the project stating that they met with Progress Energy and they are going to do a new program for energy efficiency for apartments. They will also work with Progress Energy on a program for energy efficiency in the common areas.

Mayor Bellamy closed the public hearing at 6:38 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Bothwell found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4181, to amend the approved conditional zoning master site plan for Hunt Hill Apartments, located at 56 Hunt Hill Place, to eliminate the Carroll Avenue entrance. This motion was seconded by Councilman Smith and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 202**

**E. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE ASHEVILLE MARKET, LOCATED AT 4 SOUTH TUNNEL ROAD TO REDEVELOP AN EXISTING RETAIL CENTER AND CONSTRUCTION OF A NEW BUILDING, AND A MODIFICATION REQUEST TO LANDSCAPE REQUIREMENTS**

**ORDINANCE NO. 4182 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE ASHEVILLE MARKET, LOCATED AT 4 SOUTH TUNNEL ROAD**

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:39 p.m.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that the applicant is requesting approval of site plans for the redevelopment of an existing retail center that will include new construction and partial demolition. This project is considered a Level III review pursuant to Section 7-5-9(a) of the UDO which designates review for commercial uses of over 100,000 square feet. Level III projects are reviewed as Conditional Use Permits in the Regional Business District.

The site consists of a 13.13 acre parcel located at 4 South Tunnel Road (13.33 total project area – 0.20 acres on an adjacent leased parcel). The area is zoned Regional Business and is currently the location of a strip shopping center with various tenants, formerly anchored by Kmart (recently closed). The site is bordered by Interstate 240 to the east, similar strip retail centers to the north and south and the Asheville Mall is across Tunnel Road to the west.

The proposal is to redevelop an existing retail center with new construction, renovation and full parking lot and site compliance. Approximately 91,600 square feet of existing building will be demolished with approximately 80,104 square feet rebuilt for a proposed total of 136,566 square feet *(142,500 SF maximum)*.

Overall, plans indicate 121,566 square feet designated for retail with 15,000 square feet dedicated to a restaurant use (also subject to change depending on final tenant mix). There are nine retail spaces designated on the plans (four new, five existing); however several of the larger spaces are flexible and could be broken down into smaller retail spaces as tenants and individual space needs are identified. All but one of the spaces are within the existing footprint(s) with only Building H proposed as new and standing separately, towards the street.

The structures are shown on plans as single-story, but conversations with the applicant indicate that there is interest in negotiation for an enhanced design with the anchor tenant that could include the possibility of a two-story portion being incorporated, depending on the final mix of uses and subtenants. Additionally, the size and layout shown for Building H could be slightly modified depending on the final use as well.

The existing Tunnel Vision building will be demolished but the business will be relocated within the site. The only other tenant identified at this time is a Whole Foods market.

New construction and the renovated structures will include aesthetic elements such as (but not limited to) brick masonry (both painted and unpainted), wood-lined façades, steel lintels and wood soffits creating open storefronts, covered canopies and other details to break up the façades and create visual interest. The Whole Foods will include an outdoor patio with seating and a fireplace.

The site is currently accessed in two locations from South Tunnel Road and these driveway cuts will remain. Each access point includes three travel lanes; one ingress into the site and two egress lanes with one right-turn only lane and a lane for both straight and left turning. The northernmost driveway will be re-oriented from its current interior layout.

The existing parking field will be reorganized and regraded to create more user-friendly slopes. There are a total of 576 spaces, including 20 handicapped-accessible spaces dispersed throughout the site. There are 30 bike parking spaces. Additionally, plans show two designated charging stations for electric cars.

Sidewalks are to be provided along the entire frontage of the property as well as pedestrian pathways into the site along each driveway and a pedestrian connection from Building H to the street. There is a transit shelter shown at the northernmost driveway.

Landscaping is required for this project and includes street trees, street buffer, parking lot landscaping, building impact landscaping and screening of dumpsters. *See below for landscaping modification request.*

Open space is not required for this proposal because the redevelopment does not result in additional square footage.

The application is requesting the following standards to be modified, based on the challenges of the site and upgrading an existing development:

1. *Landscape Island Width* – The applicant is requesting to reduce the average width of the landscape islands, creating some irregularly-shaped islands due to the challenges of working within an existing development. Some islands will be greater than the required minimum with while some are slightly below. In three locations, the narrowest width is 7 feet.
2. *Building Impact and Parking Lot Landscaping* – Because of the existing nature of this development, the applicant is requesting to include less than the required number of plantings that would be needed for a new development. This proposal shows significantly more than the required number of shrubs but fewer trees. The lot will be significantly shaded and landscaped.

This proposal was approved with conditions by the Technical Review Committee on February 4, 2013. The project received unanimous support (4-0) by the Planning & Zoning Commission at their meeting on March 6, 2013. There was discussion regarding the proposed development eliminating access from this site to the AT&T store but it was the ultimate decision of the Commission that since the owners of that site had not renewed their deeded cross-access (which had been in place from 1977 until it expired in 2008), the developers of the Asheville Market were not required to keep that access open.

Staff has been contacted by the owner of the AT&T store immediately adjacent to the south. Currently, there is shared internal access between the subject property and the AT&T parcel and the owner would like for that to be maintained. The applicant has eliminated that connection due to topographic challenges with reorganizing the parking fields. During the Level I review for the AT&T site in 2011, no shared access or parking agreements were required or maintained due to the fact that the AT&T site complies on its own parcel with respect to parking and maneuvering and also has its own driveway directly onto South Tunnel Road.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

**1. That the proposed use or development of the land will not materially endanger the public health or safety.**

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The site is an existing retail shopping center and will not change significantly in terms of layout. The new development is in-line with the past building footprint so there is not a major change to the site in terms of grading or earth moving. There are a few small retaining walls needed due to the existing topography of the site, otherwise, the proposed use and development remains compatible with the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The overall proposal includes multiple upgrades and amenities that should improve the value of the area and should not injure the value of adjoining or abutting properties. Aesthetic improvements to existing structures that are aligned with the new development will create a visually cohesive retail center and the improvements to the parking field, including landscaping, will enhance the overall site.

Concern has been raised regarding the elimination of the cross-access with the AT&T property as a result of the proposed improvement as possibly being injurious to the adjacent property; however, the cross-easement expired in 2008 prior to the development of AT&T property which occurred in 2011 and the site can stand on its own regarding access to Tunnel Road. A real estate appraisal or other information demonstrating a loss in value has not been submitted.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
Because this is an existing retail shopping center and since the new development and renovation is for the same or similar uses, the proposed use remains in harmony with the surrounding Tunnel Road retail corridor. The aesthetic upgrades to both building and site will enhance the character of the area and may encourage design or compliance improvements to other commercial developments in the area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
Elements of the overall project are directly aligned with the City's goals and objectives including multi-modal transportation elements (sidewalks, bike racks, electric vehicle charging stations, transit shelter) and commercial investment in a location with existing infrastructure.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The site is located in an area supported by transit (E1 & E2) and easily accessible by vehicle. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process. Associated infrastructure improvements will enhance multi-modal access, emergency protection, waste disposal and water supply.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
Existing infrastructure is adequate to handle traffic generated by this change of use. The project will create a reduction of 11,500 square feet of retail space. A traffic impact study is not required because the result of the project will be a net decrease in generated

traffic. The proposed project is not expected to cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The proposal revitalizes an existing commercial retail center with aesthetic improvements, creating a visually cohesive and updated appearance.
- Significant landscaping will be added to the large parking field, which is currently void of most vegetation.
- Sidewalks will be provided along the frontage and a transit shelter will be included.

Cons:

- Due to the challenges of working within an existing development, plans do not comply with parking lot landscaping and a modification is needed.
- Concern has been expressed regarding the elimination of a interior connection to an adjacent parcel.

Staff recommends approval of the Level III Conditional Use Permit for the Asheville Market and supports the request to modify landscaping standards based on the challenges inherent in working with a previously developed site.

In response to Vice-Mayor Manheimer, Ms. Bernstein said that at the top of the property (near the AT&T store) there will be a bus shelter and it will have a pedestrian pathway into the site. At this time they are not showing bike lanes into the project.

Mr. Lyle Darnall, representing Edens, the owner and developer, said that Edens owns 120 shopping centers (mostly grocery anchored) along the east coast and they build and develop to hold. He said they try to make sure they have some unique design elements in their developments, trying to stay focused on a unique tenant mix - they want to keep the community. They bought the shopping center back in 2004 and always thought it would be for redevelopment. They had a specific tenant (Whole Foods) in mind when the shopping center was purchased and they waited until K-Mart vacated the property. Using Applicant Exhibit 1, he showed what the location looks like currently and what their plans will be. He noted there is no landscaping on site now and not much retail mix. Since this is a good location and they have a good tenant, their goal will be to create a non-Tunnel Roadish redevelopment on Tunnel Road. They will demolish the K-Mart building and relocate Tunnel Vision into their space. They will create a whole new parking field and build all new buildings on the right side of the property. The left side of the property will be re-done with new retail. Among other things, they will construct wider sidewalks, add landscaping, include an electrical charging station and an outdoor dining area. There will be a good mix of local and regional tenants. Edens will invest $17.5 Million in the redevelopment and there will be another $12 Million invested by retailers themselves. He thought there will be an additional sales tax revenue of $3.2 Billion and ad valorem taxes go up to $180,000. There will be significant improvements to the site and the surrounding properties will see an increase in their property value as well.

In response to Councilman Pelly, Mr. Darnall spoke about the importance of the internal sidewalks for increased pedestrian activity to other retailers in the development, and the retail mix noting that they are not looking for any chain restaurants.

When Councilman Pelly asked about the lack of access to the AT&T store, Mr. Darnall said that the Planning & Zoning Commission did ask that they open up a conversation with AT&T which they did. The way the driveway is situated is purposeful because Whole Foods is particular about their parking field. Mr. Todd Simmons, civil engineer for the project, also responded to this

issue. He said they had to create a usable parking field for Whole Foods. The driveway now is steep and they had to cut it down to flatten the grade to get a more usable parking field. That is what necessitated the need to bring the driveway move over. The secondary benefit of moving the drive is that it will now align more with the driveway into the Asheville Mall across the street. The new drive created a 5-foot grade separation between existing AT&T store and the new driveway location. They looked at trying to put a driveway connection in near the AT&T store, but kept coming back to the same conclusion - they don't believe it is a safe maneuver due to the close proximity to the intersection of Tunnel Road and the very steep grade. In addition, he felt that the N.C. Dept. of Transportation would probably have a concern as well due to the limited cue to Tunnel Road. They also looked at a right turn out, but again due to the steep slope and limited cue to Tunnel Road, they felt that was unsafe as well. From an engineering standpoint, the grade differential is too much to overcome.

Mr. Lavoy Spooner, representing AT&T, felt this will be an excellent redevelopment of the property. However, their concern is that the AT&T store is an established business and their primary access is the cross-connection from the existing driveway. If that cross-connection is cut off, it will leave them only with the secondary access to the north of their building. That secondary access certainly will be a safety hazard for those people wishing to turn left out of the lot. That is a major safety concern. They are not concerned with the loss of parking, but losing the cross-access from the now K-Mart shopping center lot.

Mr. Jack Summers, owner of the AT&T building, agreed that their concern is the loss of access. They asked that that access be maintained. They had a deeded access from 1977 to 2008. They asked for continued deeded access, but were denied that access by the developer. He contacted the N.C. Dept. of Transportation and they encouraged connectivity. The regional Dept. of Transportation felt it is feasible to actually maintain that access, even if the developer had to drop down slightly as far as the slope. Their concern is the southbound access. Another concern is that Mr. Jeremy Goldstein (Vice-Chairman of the Planning & Zoning Commission) is also legal counsel for the developer. Even though he was recused from participating due to a conflict of interest, "we all know that it's a small community with a lot of friendships." Because of that, there could be a conflict of interest according to the American Bar Association. He requested the developer keep the access open, whether it be a right-turn out only or whatever it needs to be.

Mr. Tikkun Gottschalk, attorney representing the developer, said that he examined the title to the AT&T property and offered that examination with the deeds (Applicant Exhibit 2). There was an easement granted for the predecessor in title to the AT&T property which has expired. It expired in 2008 and was not renewed. There is no legal right for the AT&T property owner to insist on access over this property. In fact, a key question is if this project is approved will it substantially injure a neighboring property owner. The AT&T owner has suggested that this will injure his property; however, traditionally an actual appraisal would have been done showing that injury to the value of the property which Council has not been shown. Council has heard that this project could very well increase the value of that property.

City Traffic Engineer Jeff Moore provided Council with a portion of the N.C. Dept. of Transportation Policy on Street and Driveway Access to North Carolina Highways (City Exhibit 4). Cross-connectivity of developers is definitely desired anytime it's possible. To say that the maneuver to leave the secondary access of AT&T going south on Tunnel Road is dangerous, he could not say that. He would say it is busy at times. If it is determined to be dangerous, then that should be visited and determined if that access should be allowed to stay open if it's dangerous.

Using a drawing showing the new drive (City Exhibit 5), Mr. Moore responded to Councilman Bothwell regarding the pedestrian phase of the sidewalks and crosswalks at the northern and southern access points on Tunnel Road from the property.

When Councilman Hunt asked if it was typical for a local government, through a zoning action, to impose the requirement for cross-connectivity, City Attorney Oast said it is difficult when you are dealing with owners of separate properties. The AT&T building was approved as a Level I stand-alone project and the access was nice to have, but it was not required. If the applicant has presented evidence that all seven conditions of the conditional use permit standards have been met, that the application cannot be denied. It is the opinion of our Traffic Engineer that the proposed project is not expected to cause undue traffic congestion or create a traffic hazard. The cross access can be encouraged, but in this case, he was not sure that requiring it would be appropriate.

Mayor Bellamy recalled the project on Hendersonville Road and the concerns of residents from Crowfields not having a safe left turn. She felt it is nearly impossible to make the left turn out of the secondary access of the AT&T lot. She did not feel that condition no. 1 has been met from a public safety standpoint if the current access is cut off. As wonderful as the project is, it will be hard for her to approve the project by cutting off access of a neighbor who has had access for years. If there is a motion to approve the project, she asked that a condition be placed on it to provide a new access on the new driveway for AT&T.

Councilman Bothwell suggested people park in the new Whole Foods lot near the new retail and walk across the new drive to the AT&T store.

Vice-Mayor Manheimer felt there were similar situations of people having to make left hand turns on Merrimon Avenue. She was concerned about forcing two property owners to would out access issues.

After listening to Director of Transportation Ken Putnam about the access on the new drive being close to Tunnel Road, Councilman Hunt felt it was fair to say that there may be some increased safety concerns relating to traffic coming out of the AT&T access if the access were provided, but there would also be safety concerns going into the AT&T store if the access were provided.

In response to Mayor Bellamy, Mr. Putnam explained that the developer would have to re-design the new driveway to accommodate an access to the AT&T store.

Councilman Smith felt that a grocery store in that area is something that was missing and appreciated the work of the developer. He had sympathy for the representatives at the AT&T building, but he didn't think the no access from the new driveway rises to a safety issue that should stop the permit.

Councilman Smith found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4182, granting a conditional use permit for the Asheville Market, located at 4 S. Tunnel Road, and approval of the modification request to the landscape requirements, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10 of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with this ordinance, will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; and (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards. This motion was seconded by Councilman Hunt.

Mayor Bellamy asked for a delay until the next Council meeting in order for the property owners to address the access issue. She does not want to stop the permit process, but felt that this important project and it should not hamper the existing business of AT&T.

Councilman Smith was not in favor of a delay since it would be perceived as an on-going perception that it's hard to build in Asheville. Vice-Mayor Manheimer was not in favor of a delay either.

Mr. Robert Deutsch, attorney representing Edens, said that after the Planning & Zoning meeting the parties had a meeting in the hall and Edens submitted all the elevations of their required area to the AT&T owner so that he could have his engineers submit a proposed solution to them. They have not received anything. He called the AT&T representative two times this week to see if they had any information and did not get a return call. The reason why this property works is because of Whole Foods and they lay down their requirements of what they have to have. The driveway must be moved to meet Whole Foods' requirements.

Mr. Summers said they are concerned about the southbound traffic from their secondary access. He asked Council take into account the expense of accidents and injury of those folks who have accidents at that intersection. As far as working with the developer, they did meet after the Planning & Zoning Commission and he signed a letter of authorization for their engineers and surveyors to go onto the AT&T property and find a solution that would be workable. They have not heard anything or received any response.

After rebuttal, Mayor Bellamy closed the public hearing at 7:41 p.m.

Councilman Davis moved to call the question. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

In response to Councilman Bothwell, Mr. Putnam said that there could be a no-left turn going out of the AT&T secondary access, or the N.C. Dept. of Transportation could make the drive-way right-in and right-out. The courts have held for years that no property is guaranteed full access. They are guaranteed access but it can be limited in nature. Those are two avenues for the N.C. Dept. of Transportation to pursue.

Councilman Pelly agreed with Councilman Hunt that there are safety concerns with a new access onto the new driveway. Ultimately, the AT&T property owners were aware that the deeded access had expired and because of the overall benefit of the redevelopment, he would support the conditional use permit.

Mayor Bellamy felt that this is a great project and she wished the Council would have asked the developer to work with the property owner to find a solution so that the redevelopment would not injure the existing AT&T property. She would support the conditional use permit, but asked for a six-month update on reported accidents at the intersection of S. Tunnel Road and the access point to the AT&T store. After hearing that update, she would want to see what we can do to mitigate this issue. She hoped that the two property owners will continue to discuss this so something positive can come out of this.

The motion made by Councilman Smith and seconded by Councilman Hunt carried unanimously.

**ORDINANCE BOOK NO. 28 - PAGE 205**

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Timothy Sadler (1) advocated not only for keeping Saturday transit service, but to increase the transit budget which has been flat for five years; (2) voiced opposition for an employee of the gas company being appointed to the Sustainable Advisory Committee on Energy & the Environment; and (3) request that the public comment portion of Council meetings be held at the beginning of the meetings.

Mr. Michael Palmer spoke about community being the common theme of people in Asheville.

Mayor Bellamy presented into the record a petition she received to continue bus route #51 to Biltmore.

Councilman Smith said that when Council passed the amended Fees and Charges in March, there was inadvertently an increase in the fees for the farmers' markets which goes against the spirit of the Food Action Plan. He moved to revisit on the May 14 agenda the fees & charges specifically for farmers' markets. This motion was seconded by Councilman Bothwell and carried unanimously.

**Closed Session**

At 7:54 p.m., Councilman Pelly moved to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 8:36 p.m., Councilman Smith moved to come out of closed session. This motion was seconded by Councilman Hunt and carried unanimously.

**VIII. ADJOURNMENT:**

Vice-Mayor Manheimer adjourned the meeting at 8:36 p.m.

Magdalen Bowlesor
CITY CLERK

MAYOR

Tuesday – May 7, 2013- 5:00 p.m.
Council Chamber - 2nd Floor, City Hall

Special Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

Mayor Bellamy opened the special meeting at 5:00 p.m. She said that the purpose of this special meeting will be to consider authorizing legal action regarding NC House Bill 488, and other matters relating to the City's water system and the effects of House Bill 488. At the meeting, it is anticipated that Council will into closed session, for the purpose of consulting with an attorney employed by the City about matters with respect to which the attorney–client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization for the closed session is contained in N.C.G.S. 143-318.11(a)(3).

At 5:01 p.m., Councilman Pelly moved to go into closed session, for the purpose of consulting with an attorney employed by the City about matters with respect to which the attorney–client privilege between the City and its attorney must be preserved, including potential litigation to challenge House Bill 488. The statutory authorization for the closed session is contained in N.C.G.S. 143-318.11(a)(3). This motion was seconded by Councilman Smith and carried unanimously.

At 5:19 p.m., Councilman Bothwell moved to come out of closed session and return to the special meeting. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION NO. 13-88 - RESOLUTION AUTHORIZING LEGAL ACTION TO CHALLENGE HOUSE BILL 488, RATIFIED MAY 2, 2013, SHOULD IT BECOME LAW**

City Attorney Oast said that the imminent effectiveness of House Bill has the potential to affect the health, sanitation and safety of the City of Asheville, and the users of the water system, and has the potential to affect the City's financial soundness. He presented Council with a resolution which directs the City Attorney to take appropriate legal action to: (a) challenge the validity of House Bill 488, should it become law, (b) have said law declared invalid, (c) obtain appropriate injunctive or other relief to prevent said law from becoming effective, (d) seek compensation for the forced transfer of the water system and (e) such other or further relief as necessary or appropriate; and to employ such attorneys or other persons as may be needed to assist in said legal action.

Councilman Hunt moved for the adoption of Resolution No. 13-88. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35 - PAGE 270**

Mayor Bellamy said City Council has made the decision to sue the State of North Carolina in order for us to keep our water assets. She did not believe we should have to sue the State over our water system because we are effectively running our system. Over the last seven years, we have invested almost $17 Million into the system, made tough decisions about rate increases, established replacement lines, and have been transparent of the Capital Improvement Program. This is not the time to stop moving. We will continue to move forward to aggressively meet the needs of our citizens in the city limits and those who are outside the city limits.

At 5:24 p.m., Mayor Bellamy adjourned the meeting.

Magdalen Burleson
City Clerk

Mayor

Tuesday – May 14, 2013- 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson/Deputy City Manager Jeffrey B. Richardson; Assistant City Attorney Martha McGlohon; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Vice-Mayor Manheimer gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING MAY 19-25, 2013, AS "NATIONAL PUBLIC WORKS WEEK"**

Mayor Bellamy read the proclamation proclaiming May 19-25, 2013, as "National Public Works Week" in the City of Asheville. She presented the proclamation to various individuals from the different divisions in the Public Works Department.

**B. PROCLAMATION PROCLAIMING MAY 19, 2013, AS "JOYRIDE FOR LIVESTRONG DAY"**

Mayor Bellamy read the proclamation proclaiming May 19, 2013, as "JOYride for Livestrong Day" in the City of Asheville. She presented the proclamation to Ms. Laurie Masterson, who briefed City Council on some activities taking place during the day.

**II. CONSENT AGENDA:**

At the request of Vice-Mayor Manheimer Consent Agenda Item "P" was removed from the Consent Agenda due to a conflict of interest.

**A. APPROVAL OF THE MINUTES OF THE COMMUNITY BUDGET MEETING HELD ON APRIL 18, 2013, THE REGULAR MEETING HELD ON APRIL 23, 2013; AND THE SPECIAL MEETING HELD ON MAY 7, 2013**

**B. RESOLUTION NO. 13-89 - RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY REAL PROPERTY ON (1) SHORT STREET TO WILLIAM OMARK AND CHERYL HARRIS; (2) S. BEAUMONT STREET TO JEFFREY BLACK; AND (3) ON HANSEL AVENUE TO TRACY BRITT PLEMMONS**

Summary: The consideration of a resolution declaring the high bidders for the sealed bid sale and authorizing the conveyance of three parcels of City owned property, known as the Short Street lot, S. Beaumont Lot, and Hansel Avenue lot.

The City of Asheville owns three properties that are currently designated as surplus, residential, vacant lots – the Short Street lot (0.12 acres, PIN 9649-11-8703-00000), S. Beaumont lot (0.204 acre, PIN 9648-69-7439-00000) and Hansel Avenue lot (0.69 acres, – PINs 9638-49-6279-00000 and 9638-49-6460-00000).. On March 26, 2013, Council authorized staff to proceed in marketing the properties for sale under the sealed bid process. In the 30 day period that followed, the properties were posted for sale, listed on the local Multiple Listing Service (MLS), and advertised online. Staff received several inquiries for each parcel.

On May 3, 2013, the bid opening was held and the results are as follows:

(1) Short Street – Of the three bids received, the highest bidder was William Omark and Cheryl Harris at $75,747.
(2) S. Beaumont Street – Of the four bids received, the highest bidder was Jeffrey Black at $41,000.
(3) Hansel Avenue – One bid was received, therefore the highest bidder was Tracy Britt Plemmons at $22,000. (Hansel Avenue was the only property to receive a sole bid. This is likely due to the fact that a sewer line constraints most of the buildable area of the property.)

For each property, the highest bid is consistent with the estimated fair market value. At this time, staff is recommending that Council authorize the sale of each property to the highest bidder as listed above.

This action complies with the City Council Strategic Operating Plan by supporting Fiscal Responsibility, through disposition of real property at market value.

Pros:

- The sale will be at fair market value as established by the sealed bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Con:

- There is no negative impact.

The proceeds from the sale of the S. Beaumont and Short Street parcels will benefit the Community Development Block Grant fund. The sale of the Hansel Avenue parcel will benefit the General Fund and will be designated for future economic and community development projects.

Economic Development staff recommends adoption of the resolution authorizing the conveyance of three parcels of City owned property, known as (1) Short Street lot, (2) S. Beaumont Lot, and (3) Hansel Avenue lot.

**RESOLUTION BOOK NO. 35 - PAGE 272**

**C. RESOLUTION NO. 13-90 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONSTRUCTION AGREEMENT WITH BUCHANAN AND SONS INC. FOR THE SPRING 2013 WATER SYSTEM NEIGHBORHOOD ENHANCEMENT PROJECTS**

**ORDINANCE NO. 4183 - BUDGET AMENDMENT FOR THE 2013 WATER SYSTEM NEIGHBORHOOD ENHANCEMENT PROJECTS**

Summary: The consideration of a resolution authorizing the City Manager to enter into a construction agreement with Buchanan and Sons, Inc. for the bid amount of $770,712.50 plus a

contingency amount of $115,606.50 for a total project amount of $886,319.00 for the Spring 2013 Water System Neighborhood Enhancement Projects; and a budget amendment in the amount of $728,819.00 from savings in other capital projects that were completed under budget and from combining three capital projects into one.

This project will consist of three separate job sites: (1) Chatham Road which is approximately 1380 LF of 6-inch ductile iron pipe; (2) Courtland Avenue which is approximately 1900 LF of 6-inch ductile iron pipe and approximately 200 LF of 8-inch ductile iron pipe; and (3) Long Street / Woodvale Avenue which will consist of the installation of approximately 1980 LF of 6-inch ductile iron pipe with related appurtenances and materials required in order to complete the work. The Water Resources Department (WRD) issued an Advertisement For Bids for the construction project. In response to the Advertisement For Bids, the WRD received five (5) proposals. Companies responding were:

1. Buchanan and Sons, Inc – Whittier, NC
2. Buckeye Construction Company, Inc. –Canton, NC
3. Carolina Specialties Construction, LLC – Hendersonville, NC
4. Huntley Construction Company, Inc. – Asheville, NC
5. T&K Utilities, Inc.– Asheville, NC

A review team comprised of City Staff reviewed these bids and selected Buchanan and Sons, Inc., as the lowest responsible bidder at a bid of $770,712.50. A contingency amount of $115,606.50 has been added for a total project amount of $886,319.00.

This project is part of City Council's strategic plans to improve city infrastructure and provide local (WNC) companies with labor opportunities.

Pros:

- This project will replace existing waterlines with a durable and sustainable water system for the associated neighborhoods. The existing waterlines are undersized for adequate fire protection and due to age, have a high failure rate causing costly repairs for the City and Water Resources Department and frequent outages for the customers.
- This project is aligned with the City and Water Resources Department goal of continued investment and improvement of the City's water system through Capital Improvement Projects, in order to provide safe and reliable service.
- Approval of the construction contract to the lowest responsible bidder will invest City funds in the local regional economy.

Con:

- Failure to award a construction contract would prevent the completion of these important waterline system improvements.

The Water Resources Department currently has $352,500.00 budgeted for the overall project, but these funds are currently split into three separate projects and need to be combined into one. The remaining funds of $533,819.00 needed for the contract will be transferred from other Water Resources capital projects that are completed and under budget. In order to use the funds from the other project budgets, a budget amendment is necessary.

| | |
|---|---|
| Amount in Chatham Road WL Project | $125,000.00 |
| Amount in Long Street WL Project | $ 70,000.00 |
| Amount in Courtland Avenue WL Project (to be renamed Spring 2013 NEP) | $157,500.00 |
| Amount in Completed Projects (Capital Reserves) | $533,819.00 |
| Total Amount Needed for Project, including Contingency | $886,319.00 |

The amount remaining in Water Capital Reserves will be reallocated to other capital projects as the need arises. Staff will seek Council approval on any future reallocation of these funds.

City staff recommends City Council approval of the City Manager to enter into a construction agreement with Buchanan and Sons, Inc. for the bid amount of $770,712.50 plus a contingency amount of $115,606.50 for a total project amount of $886,319.00 for the Spring 2013 Water System Neighborhood Enhancement Projects; and a budget amendment in the amount of $728,819.00 from savings in other capital projects that were completed under budget and from combining three capital projects into one.

**RESOLUTION BOOK NO. 35 - PAGE 273**
**ORDINANCE BOOK NO. 28 - PAGE 210**

**D. ORDINANCE NO. 4184 - ORDINANCE AMENDING THE FEES & CHARGES MANUAL SO THAT STREET CUT FEES CAN BE USED TO RECOVER THE FULL COST OF THE SERVICES PROVIDED**

Summary: The consideration of an ordinance amending the Fees and Charges Manual such that the Street Cut Permit fees can be used to recover the full cost of services provided.

The City of Asheville requires utility companies and contractors when placing or repairing utilities, to obtain a permit prior to cutting into any of its streets, sidewalks, alleys, squares or other public right-of-ways. Each application for a cut permit shall be accompanied by the required permit fee as set forth in the City's fees and charges manual. If the cut work extends beyond ten working days, a penalty shall be assessed in addition to the regular permit fee. In addition, any person who cuts into a public right-of-way without first obtaining the cut permit required shall be charged a penalty.

Demand for street cut permits is expected to increase during fiscal year 2013-2014, due to an increase in planned permitted work to be performed by the Metropolitan Sewerage District of Buncombe County. The increase in demand will require the use of additional resources including an additional full time construction inspector. The operational costs involved in issuing this permit include administration of the permit application and on site inspection of the repaired cut. The on site inspection typically takes 30 minutes, but is dependent on the size of the cut.

Staff has evaluated the costs involved with delivering the services associated with this fee, and recommends a fee increase to allow for full cost recovery.

This action complies with the City Council Strategic Operating Plan goal of Fiscal Responsibility by operating the City of Asheville to the highest levels of fiscal responsibility. This action also promotes Job Growth & Community Development by creating a more collaborative and effective working partnership between the City of Asheville and the Metropolitan Sewerage District of Buncombe County.

Pros:

- The Street Cut enterprise fund will be able to fully recover costs involved with the service
- Strengthens the City's partnership with MSD by working collaboratively to develop a plan for service which meets both organizations needs
- Supports diversified job growth and business development by the creation of a new position

Con:

- Increased expense for local contractors and utilities.

An increase in revenue would occur for the Street Cut enterprise fund. This additional revenue will allow for additional resources to better serve the customers of the program. The additional revenue generated will also help to ensure that the enterprise fund is not subsidized by the general fund.

City staff recommends City Council adopt an ordinance to amend the Fees and Charges Manual.

**ORDINANCE BOOK NO. 28 - PAGE 212**

**E. RESOLUTION NO. 13-91 - RESOLUTION AUTHORIZING CITY STAFF TO SUBMIT A GRANT APPLICATION TO THE FRENCH BROAD RIVER METROPOLITAN PLANNING ORGANIZATION TO PREPARE A COMPREHENSIVE MULTIMODAL TRANSPORTATION PLAN FOR THE CITY OF ASHEVILLE**

Summary: The consideration of a resolution authorizing staff to submit a grant application to the French Broad River Metropolitan Planning Organization, requesting $200,000 in federal funds to prepare a comprehensive multi-modal transportation plan for the City of Asheville.

City staff proposes the development of a comprehensive multi-modal transportation plan in the next fiscal year. Over the years the City of Asheville has developed transportation plans for individual modes of transportation. The City currently has an adopted pedestrian plan, bicycle plan, greenways plan, transit master plan, and a complete streets policy. Now the city has a need to integrate these plans into a comprehensive multi-modal transportation plan that will include these modes of transportation, plus consider automobile and freight traffic.

The French Broad River Metropolitan Planning Organization has released a call for applications for transportation planning studies, and will award grant amounts up to $200,000. The required minimum match is 20%. Staff anticipates that the total cost of the multi-modal transportation plan will be $250,000. Therefore the city is requesting $200,000 in MPO funds. The city match is projected to be $50,000. Staff will include funding for the City match in the FY 2013-14 Proposed Budget.

This plan will draw from existing transportation plans, but will also involve gathering new information through data collection and public involvement. The resulting plan will identify key destinations throughout the city, and determine the best connections between these destinations, identify specific corridor improvements, and prioritize these corridors. The planning process will develop a hierarchy of projects with estimated costs that covers all modes of transportation. This will allow the city to prioritize and implement multi-modal connections and complete streets.

This project supports the City of Asheville's Strategic Operating Plan under the goals of Multi-Modal Transportation, and Job Growth and Community Development. In addition the project supports the integration of numerous city plans including the greenways master plan, the transit master plan, the pedestrian plan, and the comprehensive bicycle plan.

Pros:

- City Council has identified Multi-Modal Transportation as a key strategic goal of the city.
- Existing planning documents will be integrated into one multi-modal plan.
- There is an opportunity to fund the planning project with 80% federal funds.

Con:

- The project requires a minimum of 20% matching funds.

The initial grant application does not have a direct fiscal impact. If awarded, the projected fiscal impact to the City of Asheville will be $50,000. As noted above, staff will include funding for the City match in the FY 2013-14 Proposed Budget. If the City does not receive the grant, the match will be held in contingency and not spent.

City staff recommends City Council adopt a resolution authorizing staff to submit a grant application to the French Broad River Metropolitan Planning Organization, requesting $200,000 in federal funds to prepare a comprehensive multi-modal transportation plan for the City of Asheville.

**RESOLUTION BOOK NO. 35 - PAGE 275**

**F. RESOLUTION NO. 13-92 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT JOY RIDE ON MAY 19, 2013**

**RESOLUTION NO. 13-93 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL ON MAY 24, 25 AND 26, 2013**

**RESOLUTION NO. 13-94 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT RIVERFEST ON AUGUST 10, 2013**

**RESOLUTION NO. 13-95 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE AVLCX EVENT ON SEPTEMBER 21, 2013**

**RESOLUTION NO. 13-96 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BLUE RIDGE PRIDE ON OCTOBER 5, 2013**

**RESOLUTION NO. 13-108 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE VENTURE ASHEVILLE EVENT ON MAY 20, 2013**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Joy Ride on May 19, 2013; Mountain Sports Festival on May 24, 25 and 26, 2013; Riverfest on August 10, 2013; AVLCX on September 21, 2013; Blue Ridge Pride on October 5, 2013; and Venture Asheville on May 20, 2013.

Review:

- YMCA of Western North Carolina has requested through the City of Asheville Development Services Department that City Council permit the sale of beer and/or unfortified wine at Joy Ride and allow for consumption at this event.

  Joy Ride will be held on Sunday, May 19, 2013, from 1:00 p.m. – 6:00 p.m. at Carrier Park.

- Mountain Sports Festival has requested through the City of Asheville Development Services Department that City Council permit the sale of beer and/or unfortified wine at Mountain Sports Festival and allow for consumption at this event.

  Mountain Sports Festival will be held on Friday, May 24 from 4:00 p.m. – 10:00 p.m., Saturday, May 25 from 10:00 a.m. – 10:00 p.m. and Sunday, May 26 from 12:00 p.m. –

6:00 p.m. within the boundaries of Carrier Park, as per the area limits referenced on a site map.

- Riverlink has requested through the City of Asheville Development Service Department that City Council permit them to serve beer and/or unfortified wine at Riverfest and allow for consumption at this event.

  Riverfest will be held on Saturday, August 10, 2013 from 1:00 p.m. – 7:00 p.m. within the boundaries of French Broad River Park, as per the area limits referenced on a site map.

- WNC Trips for Kids has requested through the City of Asheville Development Service Department that City Council permit them to serve beer and/or unfortified wine at AVLCX and allow for consumption at this event.

  AVLCX will be held on Saturday, September 21; 2013 from 3:00 p.m. to 8:00 p.m. within the boundaries of Carrier Park, as per the area limits referenced a site map.

- Blue Ridge Pride, Inc. has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at Blue Ridge Pride and allow for consumption at this event.

  Blue Ridge Pride will be held on Saturday, October 5, 2013 from 12:00 p.m. to 6:00 p.m. within the boundaries Pack Square Park's Roger McGuire Green, Reuter Terrace, City-County Parking Lot, and Spruce Street between College Street and Court Plaza as per the area limits referenced on a site map.

- Venture Asheville has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at Venture Asheville and allow for consumption at this event.

  Venture Asheville will be held on Monday, May 20, 2013 from 11:00 a.m. to 6:00 p.m. within the boundaries Pack Square Park's Raised Lawn, Vance Median and North Pack Square as per the area limits referenced on a site map.

These actions have no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for YMCA of Western North Carolina, Mountain Sports Festival, Riverlink, WNC Trips for Kids, and Blue Ridge Pride, Inc.

Con:

- Potential for public safety issues

City staff recommends City Council adopt resolutions authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Joy Ride, Mountain Sports Festival, Riverfest, AVLCX, Blue Ridge Pride and Venture Asheville.

**RESOLUTION NO. 13-92 - RESOLUTION BOOK NO. 35 - PAGE 276**
**RESOLUTION NO. 13-93 - RESOLUTION BOOK NO. 35 - PAGE 279**
**RESOLUTION NO. 13-94 - RESOLUTION BOOK NO. 35 - PAGE 282**
**RESOLUTION NO. 13-95 - RESOLUTION BOOK NO. 35 - PAGE 285**
**RESOLUTION NO. 13-96 - RESOLUTION BOOK NO. 35 - PAGE 288**
**RESOLUTION NO. 13-108 - RESOLUTION BOOK NO. 35 - PAGE 305**

**G. RESOLUTION NO. 13-97 - RESOLUTION OF INTENT TO CLOSE AN UNOPENED RIGHT-OF-WAY BETWEEN TARPON AND CRAGGY AVENUES AND SETTING A PUBLIC HEARING ON JUNE 11, 2013**

Summary: The consideration of a resolution of intent to permanently close an unopened right-of-way between Tarpon and Craggy Avenues and to set the public hearing on June 11, 2013.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjoining property owners, Bob and Caryn Hanna, Jody Guokas, Isaac Savage, Jim and Nancy Herrig, James and Martha Roberson, and Michael Kohnle and Deidre Duffy have requested the City of Asheville to permanently close the unopened right-of-way between Tarpon and Craggy Avenues

The Greenway Commission met on May 9, 2013. They voted to approve the right-of-way closure.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use. The Strategic Plan Goals most closely aligned with this closure request is the Job Growth and Community Development Goal in that it will provide infill growth to make efficient use of existing resources.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties
- Meets Council's goals to promote sustainable high density infill growth that makes efficient use of existing resources

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of intent to permanently close several portions of unopened rights of way and City streets within the Montford Commons area and to set the public hearing for June 11, 2013.

**RESOLUTION BOOK NO. 35 - PAGE 291**

**H. RESOLUTION NO. 13-98 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH TROTT COMMUNICATIONS GROUP FOR SERVICES SURROUNDING THE CITY OF ASHEVILLE'S PLANNED PUBLIC SAFETY RADIO SYSTEM UPDATE**

**ORDINANCE NO. 4185 - BUDGET AMENDMENT FOR THE CITY'S PUBLIC SAFETY RADIO SYSTEM UPDATE**

Summary: The consideration of (1) a resolution authorizing the City Manager to execute a contract with Trott Communications Group for services surrounding the City of Asheville's planned public safety radio system update; and (2) a project budget amendment for the cost of the contract in the amount of $142,600 from debt proceeds.

The City of Asheville's Motorola radio system will soon be reaching the end of its lifecycle. This means that parts will be difficult to obtain, and that system failure could create unacceptable communication gaps for public safety.

Because of the importance and expense of this key public safety radio infrastructure update project, Trott will be assisting the City of Asheville's IT Services, Police Department, and Fire Department with the following services:

- Extending the lifecycle of the current Motorola radio system as much as possible
- Refining vendor budgetary estimates so that staff and City Council can better understand budgetary impact of system replacement
- Building a competitive RFP for the system update that will seek best value for maximum public safety service
- Assisting with vendor negotiations based on deep experience with radio vendor negotiations with other municipalities with significant buyer power
- Analysis of regional radio partnership efforts, assistance in creating a practical game plan which could save budget dollars in the short- and long-term, as well as boost interoperability between agencies

Although it is easy to look at technology as an optional expense, it is important to remember that radio communications are essential to not only providing public safety services to our community, but also allowing first responders to transmit emergency communications when they are in imminent danger and need resources quickly, sometimes in a period of seconds, where traditional telephone communications would introduce dangerous delay. During times where the systems are impaired, public safety agencies would be impaired in response. For example, AFD may be able to provide defensive operations only, meaning command staff could not commit firefighters or police officers into hostile situations. One chief has recently said that on a scale of 1-10, during a system outage, agency readiness drops from a 10 to a 3.

To choose the appropriate service firm, the City of Asheville ran an exhaustive selection process, which involved the Chief's designees from Asheville Fire Department and Asheville Police Department, as well as representatives from our key public safety partner, Buncombe County. Firms were evaluated in their responsiveness to an RFQ on criteria including adherence to RFQ specifications; prior service experience with projects of similar scale, technology type, and complexity; demonstrated understanding of FCC and other regulatory requirements; professional qualification of individuals assigned to the project; and history of effective budget and schedule. After an initial screening, shortlist candidates were further evaluated through interview, reference checks, and relevant follow up.

This action complies with City Council's strategic plan, as it seeks to improve the public's safety through maintaining a sustainable emergency responder communications system ("Safe" priority), while doing so in a strategic, competitive manner ("Affordable" and "Fiscal Responsibility" priorities).

Pros:

- Ability to move forward on a key project with an experienced service provider
- Service provider has excellent public safety references, which document a proven ability to handle specialized tasks such as planning in-building coverage, mountainous terrain coverage, and working to obtain 800 and 700 Mhz licensing from the FCC
- Service provider has worked with many similar projects in a recent time frame, giving them a unique perspective on market pricing of radio systems
- Moving forward on a planned expert assessment, competitive RFP, and implementation is a more fiscally sound and responsible methodology of updating the system, versus sole-source upgrade of a system and radio coverage maps that were specified well over 15 years ago.

Cons:

- Expense of services

- Staff time utilized during assessment process

Staff is requesting that City Council adopt a budget amendment in the amount of $142,600 to establish a project budget for the contract. The funding for the contract with Trott Communications Group will come from savings in prior year projects that were funded with debt proceeds. The total anticipated cost for the public safety radio system update is expected to be approximately $6.0 million. The full budget for the update will be included in the City's FY 2013-14 Proposed Capital Improvement Program that is scheduled to be presented to City Council on May 28. The City plans to borrow $6.0 million in FY 2013-14 to fund the radio system update. Debt service payments would begin in FY 2014-15, with first year payments estimated to be approximately $765,000.

City staff recommends that City Council adopt: 1) a resolution authorizing the City Manager to sign a contract with Trott Communications Group in an amount not to exceed $142,600, and 2) a project budget amendment for the cost of the contract in the amount of $142,600 from debt proceeds.

**RESOLUTION BOOK NO. 35 - PAGE 292**
**ORDINANCE BOOK NO. 28 - PAGE 214**

**I. ORDINANCE NO. 4186 - ORDINANCE AMENDING THE CIVIL PENALTIES IN APPENDIX B OF THE CODE OF ORDINANCES FOR HANDICAPPED PARKING VIOLATIONS, FIRE LANE PARKING VIOLATIONS AND CLASS D FIRE CODE VIOLATIONS**

Summary: The consideration of an ordinance amending the civil penalties in Appendix B of the Code of Ordinances for handicapped parking violations from $100 to $250, fire lane parking violations from $35 to $50, and Class D fire code violations (obstructing fire apparatus roads and fire hydrants) from $35 to $50.

North Carolina General Statute # 20-37.6 authorizes municipalities in North Carolina to enforce the state statute pertaining to handicapped parking in the same manner as other parking offenses are enforced within the municipality. Parking violations within the City of Asheville are enforced by the assessment of civil penalties. Under NCGS # 20-37.6, a violation of the statute is an infraction which carries a penalty of at least $100 but not more than $250.

The City of Asheville issues about 850 handicapped parking citations during a typical year which equates to $85,000. Most of the handicapped parking citations are issued for infractions in parking areas for commercial businesses (for example, Ingles, Wal-Mart, Asheville Mall, etc.) by a group of volunteers who are trained by the city for this specific purpose. Staff believes the subject action would help decrease the number of infractions at handicapped parking spaces.

Prior to February 1996, the City of Asheville had three fee amounts for fire lane parking violations. The Parking Services Division issued fire lane parking violations in the amount of $10, the Asheville Police Department issued fire lane parking violations in the amount of $25, and the Asheville Fire Department issued fire lane parking violations in the amount of $35. Ordinance # 2264, which was approved on February 27, 1996, amended Appendix B of the City Code of Ordinances to make **all** fire lane parking violations consistent in the amount of $35.

The City of Asheville issues about 200 +/- fire lane parking violations during a typical year and staff believes the subject action would emphasize the seriousness of the offense and hopefully decrease the number of violations.

Appendix B includes civil penalties for Class D fire code violations that are currently set at $35. Class D fire code violations include obstructing fire apparatus roads and fire hydrants. Staff

believes that by raising the penalty to $50 it would emphasize the seriousness of the offense and hopefully decrease the number of violations.

This action complies with the City Council Strategic Operating Plan in the safe focus area by encouraging citizens to comply with existing policies and ordinances.

This item has been reviewed by the Council's Public Safety Committee and it received the Committee's endorsement on April 22, 2013 (Class D fire code violations including obstructing fire apparatus roads and fire hydrants were not specifically discussed at the meeting).

Pros:

- Encourages citizens to comply with existing policies and ordinances.
- Decreases the number of offenders (citations).
- Aids in improving response times (fire code violations).
- Aids in keeping handicapped parking spaces available for the citizens that need them.

Con:

- Increases financial liability to offenders.

There would be no negative fiscal impact to the Parking Enterprise Fund or the General Fund with the subject action. Staff believes and is hopeful that the subject action will decrease the number of citations written and as a result, it would probably be revenue neutral.

Staff recommends that City Council approve an ordinance amending the civil penalties in Appendix B of the Code of Ordinances for handicapped parking violations from $100 to $250, fire lane parking violations from $35 to $50, and Class D fire code violations (obstructing fire apparatus roads and fire hydrants) from $35 to $50.

**ORDINANCE BOOK NO. 28 - PAGE 216**

**J. RESOLUTION NO. 13-99 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ARMEN CONSTRUCTION LLC FOR THE PROJECT KNOWN AS VANCE CRESCENT STREET - OLNEY ROAD SIDEWALK IMPROVEMENT PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a contract in the amount of $159,647 plus a contingency of 20% ($32,000) with Armen Construction, LLC. for the project known as Vance Crescent Street – Olney Road Sidewalk Improvements, City of Asheville Project # ENG-11-12-010.

The sidewalks on Vance Crescent St. and Olney Rd. are in such poor condition that they are a liability to the City of Asheville. Trip hazards of an extreme nature proliferate the project site due to invasive tree roots. City staff has held numerous meetings with homeowners in the neighborhood to determine what the best, most agreeable solution would be to correct the problems while limiting any tree removal. Part of the solution was to move a portion of the walk into the edge of the street and make the street One-Way. The Fire, Sanitation and Transportation Departments have approved of the change. The project was advertised and on March 27, 2013, bids were opened with Armen Construction, LLC of Charlotte, NC, being the lowest responsible bidder with a bid of $159,647. This was in line with the Engineer's Estimate of $161,782. A 20% contingency ($32,000) has been added to allow payment for any unforeseen costs that typically arise during construction. The work produced from contract would help protect the City from claims arising from falls due to the poor condition of the sidewalks and make for safer passage for pedestrians in the neighborhood.

This action complies with the City Council Strategic Operating Plan in that it will continue construction and maintenance of pedestrian and bicycle infrastructure.

Pros:

- Will repair approximately 1,800 linear feet of sidewalk within the Asheville City limits.
- Improves pedestrian safety.
- Encourages walking, thereby reducing carbon emissions.
- Reduces the City's liability in regards to claims from trips and falls.

Cons:

- The project will cost the City approximately $159,647.
- Project management and contract administration will consume staff time.

This project will cost approximately $159,647. The budget of $192,000 for this project is already included in the City's adopted FY 2012-13 sidewalk maintenance budget.

City staff recommends City Council adopt a resolution awarding the contract to Armen Construction, LL. and authorizing the City Manager to execute on behalf of the City of Asheville a contract in the amount of $159,647 plus a contingency of 20% ($32,000) with Armen Construction, LLC for the project known as Vance Crescent Street –Olney Road Sidewalk Improvements, City of Asheville Project # ENG-11-12-010.

**RESOLUTION BOOK NO. 35 - PAGE 293**

**K. RESOLUTION NO. 13-100 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MULTI-YEAR AGREEMENT AND ISSUE PURCHASE ORDERS FOR THE EQUIPMENT LEASE, INSTALLATION, MAINTENANCE, AND PRODUCT PURCHASE OF LIQUID OXYGEN FROM AIR PRODUCTS & CHEMICAL FOR USE AT THE MILLS RIVER WATER TREATMENT PLANT**

Summary: The consideration of a resolution by City Council authorizing the City to enter into a multi-year agreement and issue Purchase Orders for a period of five years with three possible one year contract extensions, contingent upon funding, for the equipment lease, installation, maintenance, and product purchase of Liquid Oxygen from Air Products & Chemical for use at the Mills River Water Treatment Plant.

The water treatment plant process at the Mills River Water Treatment Plant is more complex than at the North Fork and William DeBruhl facilities; it includes ozone treatment for disinfection. Liquid Oxygen is needed in order to produce ozone needed for the treatment process at the Mills River facility. For many years, the City has contracted with Praxair, Inc., for the liquid oxygen product and lease of the equipment. Although the product and service from Praxair have been acceptable, the contract originated with the Regional Water Authority. To comply with the City's current contracting policies and remain competitive, staff solicited bids.

City Council previously authorized the City to enter into a five (5) year contract with up to three (3) one (1) year extensions due to the expense and complexity of the equipment. The City is requesting that those same conditions apply to the new contract. The new contract will include the product, equipment lease, installation, and maintenance.

The Water Resources Department issued a Request for Proposals (RFP) for Liquid Oxygen Procurement. In response to that RFP, the department received three (3) proposals. Companies responding and their associated five year costs were:

1. Praxair, Inc. – Danbury, Connecticut; $313,224.00
2. Air Liquide – Countryside, Illinois; $464,200.00
3. Air Products & Chemicals – Allentown, Pennsylvania; $284,250.00

A review team, comprised of staff from the City of Asheville Water Resources and Purchasing Departments reviewed these proposals and selected Air Products & Chemicals as the lowest responsive, responsible vendor. The agreement with Air Products & Chemicals will automatically renew for three (3) successive one (1) year terms unless either party gives a 12-month notice to terminate.

This project is part of City Council's strategic plan to maintain city infrastructure and to operate the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- This project will continue to supply Liquid Oxygen to the Mills River Water Treatment Plant for the production and distribution of water to customers served by the plant.
- The agreement for the supply of Liquid Oxygen will be brought up-to-date with the City's current contracting policies.

Con:

- While the old equipment is being removed and the new equipment installed, Mills River will use an alternate form of treating the water without using ozonization.

The estimated cost is $56,850.00 annually or $284,250.00 for the 5-year initial term. These costs are currently budgeted for in the Water Resources Department / Water Production Division Chemical Operations Line Item. The department does not expect to realize any cost savings in the first year due to the cost of removing the old Liquid Oxygen tanks and equipment. Cost savings may be realized over the course of the 5-year initial term.

City staff recommends City Council authorize the City to enter into a multi-year agreement and issue Purchase Orders for a period of five years with three possible one year contract extensions, contingent upon funding, for the equipment lease, installation, maintenance, and product purchase of Liquid Oxygen from Air Products & Chemical for use at the Mills River Water Treatment Plant.

**RESOLUTION BOOK NO. 35 - PAGE 294**

**L. RESOLUTION NO. 13-101 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH HAZEN AND SAWYER FOR THE FAIRVIEW SERVICE AREA WATER SYSTEM IMPROVEMENTS PHASE I PROJECT**

Summary: The consideration of a resolution by City Council authorizing the City Manager to enter into a professional services agreement with Hazen and Sawyer for the proposed amount of $95,700.00 plus a 10% contingency amount of $9,570.00 for a total project amount of $105,270.00 for the Fairview Service Area Water System Improvements Phase I.

The southeastern portion of the City of Asheville's water system, referenced as the Fairview service area, is currently serviced with a high capacity pumping station and two major ground storage reservoirs. The South Buncombe Reservoir (5 MG) supplies suction to the South Buncombe booster pumping station, which discharges into the Concord Road reservoir (1 MG) creating the Concord Tank pressure zone. The Concord Tank reservoir pressure is reduced through a pressure reducing valve to create the Mine Hole Gap pressure zone. Formerly, the Mine Hole Gap pressure zone was supplied by its own pumping station and reservoir. There are also several small pressure zones served by localized pump stations and ground storage tanks within these two major pressure zones.

Over time, increased growth and changes to the water system have made it more difficult to meet water capacity demands in this service area. It is the City of Asheville's desire to improve capacity and delivery methods for the service area. Also, lower areas within these pressure zones, particularly along the Cane Creek Road corridor, experience operating pressures far in excess of what is required or desirable. Investigating options for pressure reduction strategies in the Fairview Service area will be another component of this study.

The Water Resources Department issued a Request for Qualifications (RFQ) for Engineering Services related to the project. In response to that RFQ, the department received ten (10) proposals. Companies responding were:

4. Hazen and Sawyer – Charlotte, NC
5. Brown and Caldwell – Charlotte, NC
6. Vaughn & Melton – Asheville, NC
7. W.K. Dickson – Charlotte, NC
8. Lamm Engineering Associates, PLLC – Raleigh, NC
9. McGill Associates – Asheville, NC
10. Willis Engineers – Charlotte, NC
11. Brown Consultants, PA – Asheville, NC
12. Weston & Sampson – Charleston, SC
13. Richard Brady & Associates – Matthews, NC

A review team, comprised of staff from the City of Asheville Water Resources Department reviewed these proposals and selected the firm Hazen and Sawyer. Subsequent to this selection, Water Resources met with Hazen and Sawyer and negotiated an Engineering Services Contract in the amount of $95,700.00. A contingency amount of $9,570.00 has been added for a total project amount of $105,270.00.

This project is part of City Council's strategic plan to maintain city infrastructure and to operate the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- This project will improve water capacity and delivery methods for the Fairview Service Area.
- This project will also lead to strategies to reduce extremely high water pressure in the service area.

Con:

- If this project is not implemented water delivery and service problems will continue in this area.

The Water Resources Department currently has allocated the funds needed for this professional services agreement in the Capital Projects Fund.

City staff recommends City Council approval of the City Manager to enter into a professional services agreement with Hazen and Sawyer for the proposed amount of $95,700.00 plus a 10% contingency amount of $9,570.00 for a total project amount of $105,270.00 for the Fairview Service Area Water System Improvements Phase I.

**RESOLUTION BOOK NO. 35 - PAGE 295**

**M. RESOLUTION NO. 13-102 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONSTRUCTION AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE CONSTRUCTION FO A LEFT TURN LANE AND THE INSTALLATION OF A NEW TRAFFIC SIGNAL ON NC**

**81 (SWANNANOA RIVER ROAD) AT THE INTERSECTION WITH AZALEA ROAD**

**ORDINANCE NO. 4187 - BUDGET AMENDMENT FOR THE CITY'S SHARE OF THE CONSTRUCTION AGREEMENT**

Summary: The consideration of (1) a resolution by City Council authorizing the city manager to enter into a construction agreement with the N.C. Dept. of Transportation (NCDOT) for the construction of a left turn lane and the installation of a new traffic signal on NC 81 (Swannanoa River Road) at the intersection with Azalea Road; and (2) a budget amendment in the amount of $75,000 from unspent capital reserve funds for the City's share of the cost of the construction agreement.

The City of Asheville is currently designing improvements along Azalea Road as part of the Lake Craig/Azalea Road Project. The project including roadway improvements, provides pedestrian connections, bike lanes, a much needed water line extension to the soccer complex, and removal of fill material within the flood plain.

The City of Asheville has held three public meeting concerning the Lake Craig/Azalea Road Project. At these public meetings, the City received concerns about the need for safety improvements at the intersection of NC 81 and Azalea Road. The City of Asheville approached the NCDOT and asked that they review the intersection to determine if this intersection meets warrants for a traffic signal. The NCDOT reviewed this intersection and found a traffic signal was warranted at this location.

The NCDOT will construct the left turn lane and install the traffic signal this construction season. The NCDOT will be responsible for the maintenance of both the traffic signal and the turn lane.

The project meets City Council Strategic Operating Plan by being fiscally responsible by seeking to partner with NCDOT. The total cost of this project is estimated to be $150,000, and the City will be responsible for 50% of the cost.

Pros:
- Provide safety improvements along NC 81 and Azalea Road
- Provides opportunity to partner with NCDOT for these safety improvements.

Con:
- Requires an appropriation from unspent capital reserve funds.

The existing project budget for the Lake Craig/Azalea Road project is approximately $4.2 million, with funding coming from a combination of Senate Bill 7 State Grant monies and Sullivan Act proceeds. The City's share of the cost for constructing the left turn lane and installing the new traffic signal on NC 81 are not part of the existing budget and cannot be funded with either Senate Bill 7 State Grant monies or Sullivan Act proceeds. Therefore, the construction agreement requires that the City amend the budget and appropriate $75,000 from unspent capital reserve funds. There is currently $205,000 in unexpended capital reserve funds. After this $75,000 appropriation, there will be a remaining balance of $130,000. Staff anticipates appropriating a portion of this remaining balance for the FY 2013-14 CIP.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to enter into a construction agreement on behalf of the City of Asheville with the N.C. Dept. of Transportation for a project estimated to cost $150,000, of which the total cash match from the City of Asheville will be half the construction cost estimated to be $75,000, and the City Manager is further authorized to execute any change orders to said agreement or documents which may arise during construction of said project up to the budgeted amount; and (2) a budget amendment

in the amount of $75,000 from unspent capital reserve funds for the City's share of the cost of the construction agreement.

**RESOLUTION BOOK NO. 35 - PAGE 296**
**ORDINANCE BOOK NO. 28 - PAGE 218**

**N. ORDINANCE NO. 4188 - BUDGET AMENDMENT TO PAY WORKERS' COMPENSATION CLAIMS EXPENSES THAT HAVE EXCEEDED THE APPROVED BUDGET AMOUNT**

Summary: The consideration of a budget amendment, in the amount of $500,000, from insurance program reserves to pay workers' compensation claims expenses that have exceeded the approved budget amount.

The City's Fiscal Year 2012-13 adopted budget for the workers' compensation fund totaled $1,157,774. The budget is established each year to pay premiums, administrative costs, and regular, routine claims. For Fiscal Year 2012-13, claim costs related to a catastrophic accident in the current fiscal year are projected to exceed the City's $550,000 self-insured retention limit and are greatly impacting the budgeted claims amount in the fund. As a result, staff is requesting a budget amendment in the amount of $500,000. Budget authorization for this increase will be allocated from reserves set aside in the City's self insured insurance program.

This action complies with the City Council Strategic Operating Plan goal of "Operate the City of Asheville to the highest levels of fiscal responsibility."

Pro:

- Provides budget authorization to fully fund expected workers' compensation claims expenses in the current fiscal year.

Con:

- Requires appropriation from insurance program reserves.

This budget amendment will not impact the General Fund or any of the other operating funds. The budget amendment provides authorization to appropriate $500,000 from insurance program reserves. The current reserve within the insurance program is adequate to cover FY 2012-13 program expenses. Staff is in the process of developing a reserve policy for both the workers' compensation and general liability funds, and will be bringing this policy to the City's Finance Committee and eventually City Council later this year.

City staff recommends City Council approve the budget amendment appropriating $500,000 from insurance program reserves to pay workers' compensation claims expenses that have exceeded the approved budget amount.

**ORDINANCE BOOK NO. 28 - PAGE 220**

**O. ORDINANCE NO. 4189 - BUDGET AMENDMENT FOR A PART-TIME TEMPORARY INTERN IN THE OFFICE OF SUSTAINABILITY**

Summary: The consideration of a budget amendment, in the amount of $ 1,800, from Warren Wilson College, to appropriate revenue and budget expenditure accounts associated with the payment for a part time temporary intern.

The City of Asheville and Warren Wilson College (WWC) formed a strategic partnership in June 2007 to collaborate in our efforts to reduce green house gas emissions. A valuable part of this partnership is to provide professional development opportunity to WWC students. Warren

Wilson College will provide the funds for payment to this intern upon approval of this budget amendment request.

The Sustainability Education Intern will support energy efficiency outreach efforts in the Office of Sustainability.

This action complies with the City Council Strategic Operating Plan in the following ways: (1) Seek efficiencies in master plan implementation by identifying plan interdependencies, funding sources and key partnerships; (2) Expand partnerships with institutions to achieve common goals; (3) Identify strategies and costs for increasing the city's annual energy reduction goal to 4%.

Pro:

- Internship supports the City Office of Sustainability efforts to reduce carbon footprint of city operations

Con:

- None identified.

The $1,800 for the intern's stipend will be funded through Warren Wilson College to be paid through the City of Asheville.

City staff recommends City Council adopt the budget amendment to appropriate revenue and budget expenditures associated with payment of the intern's stipend.

**ORDINANCE BOOK NO. 28 - PAGE 222**

**P. RESOLUTION AUTHORIZING THE EXECUTION OF A $1,150,000 INSTALLMENT FINANCING CONTRACT WITH TD BANK FOR THE PURCHASE OF VEHICLES AND COMPUTER EQUIPMENT**

This item was pulled from the Consent Agenda due to a conflict of interest by Vice-Mayor Manheimer.

**Q. RESOLUTION NO. 13-104 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE WATER RESOURCES DEPARTMENT TO PARTNER WITH THE MILLS RIVER PARTNERSHIP TO IDENTIFY PROJECTS DIRECTLY RELATED TO WATER QUALITY PROTECTION OR IMPROVEMENT IN THE MILLS RIVER WATERSHED WITH THE UNDERSTANDING THAT ANY FUTURE ALLOCATIONS AND EXECUTED CONTRACT WOULD NEED CITY COUNCIL APPROVAL**

Summary: The City of Asheville Water Resources Department and the City of Hendersonville contracted with McGill Associates to review the 2002 Mills River Watershed Management Strategy document and provide an assessment based on changes in the status of the watershed and supporting information. The Mills River Partnership (MRP) has secured funding from the City of Hendersonville and outside sources to implement steps aimed at Mills River watershed protection. The City of Asheville has been asked to consider a level of financial support for the MRP activities.

The North Carolina Clean Water Management Trust Fund awarded a grant to the MRP in August 1999. In addition to several projects targeted to improve water quality in the Mills River watershed, the management strategy document ("The Mills River Watershed Management Strategy") was funded. In 2002, the MRP Planning Committee and the Land-of-Sky Regional Council released the study. This report covered a description of the watershed area and the activities in the watershed, the results of water quality assessments, and a compilation of management strategies.

The funding for projects within the watershed, and to some extent the MRP, declined after several years following the 2002 report. The MRP regrouped about three (3) years ago and began seeking funding to perform some of the tasks identified in the 2002 document. The Partnership approached the City of Asheville, the City of Hendersonville, and the Town of Mills River requesting funding for a variety of projects and administrative costs.

The City of Asheville and the City of Hendersonville decided to review the 2002 Mills River Watershed Management Strategy in light of changes in the watershed over the past 10 years. The intent of this review was to assess the conditions within the watershed, identify any agencies dealing with regulatory or financial support, review the available water quality data, and propose areas that the cities may want to consider for future participation.

Recently, the Partnership was awarded a grant (Section 319 Grant) that requires matching funds, which the Partnership is asking the aforementioned cities to provide. The Cities have an ongoing interest in watershed management. Water quality in the upper watershed continues to be excellent and overall water quality indices have improved during the past 10 years. The strategy review recommends that the focus remain on efforts to protect and improve water quality. While recognizing that the MRP is the leading non-regulatory body with interest in the condition of the watershed, strong relationships should be forged between non-regulatory and regulatory programs. Funding initiatives should be considered with an understanding of their long-term impact on water quality.

Water Resources is willing to provide cost-share funding for projects that are directly related to water quality protection or improvement. The suggested level of participation is an amount up to $60,000 per fiscal year (approximately $0.01 per CCF system-wide) for a maximum of three fiscal years with the understanding that funding is project-specific and subject to the appropriation of funds.

Participation in watershed management activities supports the City Council's Strategic Operating Plan by promoting partnerships to enhance water quality and efficient operations.

Pros:

- Opportunity to partner with the City of Hendersonville and the Mills River Partnership to strategically address areas of concern in the Mills River watershed.
- Funding from the City of Hendersonville and the City of Asheville could make some water quality projects feasible for farmers and local landowners.
- Funding from the City of Hendersonville and the City of Asheville could support public education efforts related to water quality protection.
- Projects in the watershed could improve source water and drinking water quality.

Cons:

- If the City does not participate in the funding of specific water quality projects, these projects may not occur.
- The City of Asheville Water Resources Department does not want to provide unrestricted funding to outside agencies.
- The City of Asheville Water Resources Department wants to retain control of how the funding is allocated to specific projects to maximize benefits to water quality.

Any future expenditure in the Mills River watershed would be subject to review by Water Resources staff and the City of Asheville. For the FY 2014 budget, Water Resources would request City Council to approve a budget amendment to transfer the participation funds needed from the Water Resources Capital Projects Budget to the Operating Budget; and further authorize the City Manager to execute a multi-year contract for the entire project in a not-to-exceed amount of $180,000 over three (3) fiscal years contingent upon funding each year. For the FY 2015 and

2016 budgets, Water Resources would budget the maximum allowable expense in the Water Operating Budget as part of the regular budgeting process.

Water Resources staff recommends City Council approval to partner with the Mills River Partnership (MRP) to identify projects directly related to water quality protection or improvement in the Mills River Watershed. The level of participation recommended is an amount up to $60,000 per fiscal year (approximately $0.01 per CCF system-wide) for a maximum of three fiscal years with the understanding that funding is project-specific and subject to the appropriation of funds. If Council approves moving forward with this project, Water Resources would seek Council approval for a budget amendment and execution of a general services contract after projects have been identified.

**RESOLUTION BOOK NO. 35 – PAGE 299**

**R. MOTION TO REQUEST THE BUNCOMBE COUNTY BOARD OF ELECTIONS TO ARRANGE FOUR ADDITIONAL EARLY VOTING SITES (ONE EACH IN NORTH, SOUTH, EAST AND WEST SECTIONS OF ASHEVILLE) THE ONE WEEK (INCLUDING SATURDAY) IMMEDIATELY PRECEDING THE 2013 CITY COUNCIL GENERAL ELECTIONS**

Summary: The Buncombe County Board of Elections has asked if the City of Asheville will be requesting additional early voting sites for the General election on November 5, 2013. There are 37 normal polling places for City Council elections - during the primary and general elections. The City must notify the Board of Elections 30-45 days prior to the election if they would like to have more remote sites, in order for them to submit a plan of implementation to the State Board of Elections for approval. The City can let the Board of Elections know what locations they would like to have a remote site but the Board of Elections will then have to find a suitable site in that area. Citizens always have the opportunity to vote 2.5 weeks early at the Woodfin Street office (in 2011, 2,354 voted early at the Woodfin Street office).

In 2009, 2,008 people voted in the four additional early voting locations.

In 2011, City Council approved four additional early voting sites (one each in north, south, east and west sections of Asheville, preferably at a library or community center) the one week (including Saturday) immediately preceding the City Council general election. The cost for those additional sites was $20,000. In 2011, 3,380 people voted in the four additional early voting locations.

The proposed budget that staff is currently working on for Fiscal Year 2013-14 includes funding for the fall election, including the four additional early voting sites.

If Council is in agreement, City Clerk Burleson will contact the Board of Elections to arrange for four additional early voting sites (one each in north, south, east and west sections of Asheville, preferably at a library or community center) the one week (including Saturday) immediately preceding the City Council general election early voting sites for the 2013 City Council election.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Bothwell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Pelly and carried unanimously.

**ITEM REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTE**

**RESOLUTION NO. 13-103 - RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASHEVILLE, NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT AND DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**

Councilman Smith moved to recuse Vice-Mayor Manheimer from voting due to a conflict of interest. This motion was seconded by Councilman Bothwell and carried unanimously.

Summary: This is the consideration of a resolution authorizing execution of a $1,150,000 installment financing contract for Fiscal Year 2013 Vehicles and Computer Equipment.

The City of Asheville Fiscal Year 2013 Capital Improvement program (CIP) includes $1,150,000 previously appropriated by City Council to finance the acquisition of various vehicles and computer equipment.

The Finance Department posted a Request for Proposal ("RFP") on both the City's website and the State of NC Interactive Purchasing System to seek competitive bids for the financing. Six proposals were received, the best of which was submitted by TD Bank at an interest rate of 0.92% per annum for a term of 59 months.

The proposed resolution authorizes an installment financing contract between the City of Asheville and TD Bank for the purchase of the vehicles and computer equipment and authorizes the City Manager, City Attorney and Deputy Finance Director and City Clerk to execute and deliver any and all necessary documents. The contract will place a security interest in the vehicles and computer equipment in favor of the Bank in order the secure the City's obligation under the contract. Pursuant to a previously adopted reimbursement resolution, proceeds from this financing contract will allow the City to reimburse itself for the cost of the vehicles and computer equipment which has already been procured.

Pros:

- Provides funding of capital expenditures at a very favorable effective interest rate.
- Financing capital purchases spreads the cost of acquisition over several years of the useful life of the asset.
- Reimbursing this capital purchase with the proceeds of the financing, as opposed to paying for the purchase by using the City's available cash balances, increases the currently available funds by allowing the restoration of fund balance.

Cons:

- Financing the purchase slightly increases the lifetime cost of the acquisition due to the payment of interest on the amount financed.

The annual debt service payment for this financing is approximately $280,000 per year. Funds will be included in the City's FY 2013-14 proposed debt service budget to cover this cost.

City staff recommends City Council adopt the resolution authorizing the City Manager to execute an installment purchase contract and closing process with TD Bank for the acquisition of the vehicles and computer equipment.

Councilman Bothwell moved for the adoption of Resolution No. 13- 103. This motion was seconded by Councilman Pelly and carried unanimously (Vice-Mayor Manheimer was recused from voting due to a conflict of interest).

**RESOLUTION BOOK NO. 35 – PAGE 297**

## III. PRESENTATIONS & REPORTS:

### A. SMOKY MOUNTAIN TOY RUN & EBLEN/ST. NICHOLAS PROJECT

Mr. Bill Murdock, representing the Eblen/St. Nicholas Project, said that two years ago they assisted 325 children and now through partnership like the City of Asheville, last Christmas they assisted almost 5,500 children. Mr. Steve Kaser and Charles Swanger, representing Smoky Mountain Toy Run, presented City Council with a 2012 Certificate of Appreciation for their support for the Smoky Mountain Toy Run. Mayor Bellamy was pleased to accept the certificate on behalf of the City of Asheville.

Mayor Bellamy then read a decree expressing City Council's deep sympathy on the passing of Joe Eblen, who is best known for his service to Eblen Charities.

### B. BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY UPDATE

Mr. Ron Morin, Chairman of the Buncombe County Tourism Development Authority, and Ms. Stephanie Pace Brown, Executive Director of the Asheville Convention & Visitors Bureau, briefed Council on their activities of the past year and goals for the upcoming year.

On behalf of City Council, Mayor Bellamy thanked Mr. Morin and Ms. Brown for their leadership and the entire Authority for their dedication.

### C. TRANSIT COMMISSION UPDATE

Ms. Julie Mayfield, Chairman of the Transit Committee, briefed Council on their activities of the past year and goals for the upcoming year.

On behalf of City Council, Mayor Bellamy thanked Ms. Mayfield for her leadership and the entire Commission for their dedication.

### D. LEGISLATIVE & WATER UPDATE

Deputy City Manager Jeff Richardson highlighted for Council the following legislative issues of interest: House Bill 488 - Transfer Control of the City of Asheville's Water System to a Regional Entity; House Bill 252 - Asheville Transfers; House Bill 418 - Park Authority; House Bill 224 - Asheville Extraterritorial Jurisdiction and Annexation; House Bill 708 - Study Public Enterprise Systems/Use of Funds; House Bill 568 - Asheville Deannexation; Senate Bill 363 - Business Tax Reduction and Reform; Senate Bill 394 - Lower Tax Rates for a Stronger North Carolina Economy; House Bill 962 - Municipal Sales Tax; House Bill 664 - Cell Tower Deployment Act; Senate Bill 612 - Regulatory Reform Act of 2013; and House Bill 530 - Eliminate the ability of Asheville to enforce signage regulations for properties annexed after 2005.

In response to Mayor Bellamy regarding House Bill 488, Assistant City Attorney McGlohon said that City Attorney Oast and other attorneys retained by the City, filed a Temporary Restraining Order (TRO) in Wake County today, and it is her understanding that the TRO has been granted. A preliminary injunction is the next step within 10 days and then if that is granted, a trial will take place.

Vice-Mayor Manheimer said that the complaint makes several claims challenging the validity of the statute being unconstitutional on several grounds. That would probably be a decision made by a judge. If the City is unable to prevail on those claims, it may be able to prevail on the secondary claims, which are for compensation if the system is to be taken. The complaint asks that if the City prevails on the matter of compensation (jury question) that the case be transferred back to Buncombe County for that type of a trial.

## C. RESOLUTION NO. 13-107 - RESOLUTION SUPPORTING DOG PARK IN NORTH ASHEVILLE

Councilman Pelly said that the City has two dog parks - one in east Asheville and one in west Asheville. Both are well used facilities, but not as convenient for some. The residents of north Asheville have been working hard to create a dog park in their area of town. They would like to update Council on the status of their efforts and ask for a resolution formalizing the City's support of development of a dog park in north Asheville.

Dr. Julie Maccarin, representing the Friends for North Asheville Dog Park, talked about their efforts to establish an off-leash dog park in their community. They have met several times to talk about the design of the park; the fund-raising strategies and management; publicity; and finding an appropriate site for the park. Not only would a dog park on the north side of town be more accessible to those residents, it would have multiple other benefits. They will be responsible for raising the funds needed. An excellent prospect has been identified as the location for the park. The site is part of the former Thoms Estate on Beaverdam Road near Wild Cherry. The developer, Arc Development, has identified some unused acreage that is accessible and nearly ideal for these purposes. She then formally requested the City's endorsement of the project and to direct the City Manager to provide appropriate staff support by appointing a primary liaison to their group.

Mr. Kevin Reese, Director of Development and Construction with Arc Development of North Carolina, which is part of the ownership group at Thoms Estate, said they have approximately 8 acres on Beaverdam Road and Wild Cherry Road that they have plans for, but a dog park is something that can be incorporated into their plans. He has taken some preliminary plans back to Mr. Ronald Britten, owner of the property and Arc Development, who is very interested. There was a site meeting to look at the property and Mr. Britten gave his verbal consent.

Councilman Pelly said that staff has reviewed the proposed resolution to support a dog park in north Asheville and if adopted, they will secure the services of a design professional to conduct the feasibility and design process with the community and stakeholders.

He said the citizen group for the north Asheville dog park has identified a $5,000 donation to help support the cost of the design process. An additional $5,000 is needed to fund the process. Funds are available in the Parks, Recreation and Cultural Arts Department in the current year savings.

Once complete, staff will bring the dog park design to the Recreation Board and to City Council for consideration of the park construction budget.

Councilman Pelly then read the resolution which stated that "City Council supports and endorses efforts to establish a dog park in north Asheville. Subject to budgetary and administrative limitations, the City will cooperate with the citizens in the establishment of a dog park in north Asheville, including the designation by the Manager of a staff liaison to assist in the process."

When Mayor Bellamy asked for comments from the public, no one spoke.

When Councilman Hunt explained that competition for capital funds regarding parks is very competitive, Councilman Pelly said that the only cost for the City is $5,000 for the design process. He assured Council that the property owner is providing the site at no cost to the City and that the capital costs would be raised entirely from private sources,

In response to Vice-Mayor Manheimer, Councilman Pelly said that the group is willing to ensure that long-term maintenance will be funded by them through fund-raising efforts.

Councilman Bothwell moved to adopt Resolution No. 13-107. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 304**

**D. MOTION TO REDUCE PERMIT FEES FOR FARM MARKETS BY 75%**

Director of Planning & Development Judy Daniel said that the City Council has requested the staff to present options for consideration of a reduction of the permit fees that are charged for Farm Markets. This use requires four types of permit fees: Building Code, Fire, Zoning, and Tech Fee (charged to all uses). The most substantial fees charged are for building code and fire permits; and those fees for this use are already substantially subsidized over other commercial uses in that Farm Markets are not charged the standard $75 fee for required weekly inspections.

The permit fees include $125 for Building Permit, $125 for Fire Permit, a tiered fee for Zoning Permit (depending on the size), and the small 4% Tech Fee charged all uses of $11. The fees are used for initial review of plans and for any subsequent required inspections. Inspections are done primarily for Building Code requirements - important for health and safety reasons. There is an initial inspection by Fire inspectors. Items inspected include the tents & their anchors, electrical connections, reviewing to be sure there are accessible routes, identifying obstructions/tripping hazards, ensuring opportunity for emergency dispersal, checking all equipment installations that may be used (stage, sound system, etc.). An inspection is required every time a market is held (usually weekly).

The only fee that has been increased recently is the Zoning fee which was changed in the last fiscal year.

Farm Markets are charged under the fees for Temporary Uses Permits as there is no separate category for Farm Markets. Farm Markets were not a primary focus of the change. These fees were adjusted in to reflect the additional work required for staff review of graduated sizes of Temporary Uses events. Previously there was a flat fee of $25; and this was changed to a graduated fee system as noted below:

| | |
|---|---|
| Events with less than 100 people expected to attend | $25 |
| Events with 100-1000 expected to attend | $100 |
| Events with more than 1000 expected to attend | $350 |

In practice most Farm Markets have generally been considered in the middle category, so for those in that size range, their inspection fee went from $25 to $100, thus an additional $75 cost.

In 2012 the total revenue collected for the eight permitted tailgate markets was $2,135 (or an average of approximately $267 per market). The average fee breakdown included:

| | | | |
|---|---|---|---|
| Building: | $125 | Fire: | $125 |
| Zoning: | $25* | Tech Fee (4%): $11 | |

The initial permit fee includes both a fire and a building inspection. After those initial inspections, each market is must be re-inspected before every market day by the building inspector but a policy decision was made in the past of not charging the normal $75 fee for the subsequent inspections. (In reality, Farm Markets are about the only Temporary Use that operate over multiple months and require ongoing inspections.)

There are other special fees depending on whether there is electrical, or an open flame (cooking) etc. So, in some cases the fees were a little higher; but in the case of the Downtown City Market, the fee was only $78 because they are permitted as a special event (not a temporary use) since they are located on public property and have non-profit status which affords them a 75% discount on all fees.

Therefore, estimating an added $75 per market for eight markets for the 2013 season, the total revenue collected would be $2,736 (an average of $342 per market).

The full cost recovery to the city for the staff time and work required through the fees for these eight markets would have required $20,285 in fees as outlined below, so the City is already discounting these events by over 85% (primarily due to the re-inspection fee that is not charged):

Although the start and end dates for the markets and their market days vary, the total days for the season ranges from 21 to 35 per market. The number of market days for all eight markets was recorded at 250 for last year.

The total number of anticipated market days, minus the initial inspections (2 x 8 sites) yields 234 inspections for which we are not collecting revenue. Multiplying that by the minimum $75 inspection fee by the number of inspections for which we are not charging the inspection fee, we lost a minimum of $17,550 last year (as additional inspections are likely).

The Council requested an option of discounting these fees by 75%. The fiscal impact of that change would depend on whether the Council wishes to reduce all the fees (Fire, Building Code, Zoning, and Technology) or just Zoning (which was increased for this year).

- If all fees were reduced by 75% that would reduce the average fee collected per market to $86; and increase the annual subsidy for farm markets to around $19,601 or 96%. The City would see a decrease in anticipated revenue of $2,051.

- If only the Zoning Permit fee were reduced by 75% (taking it back to the prior level of a flat $25), the reduction would be minimal, returning the average fee to $267 per market. A substantial subsidy would remain, as we would still not charge the weekly $75 inspection fee. The City would see a decrease in anticipated revenue of $600.

Because the existing subsidy of the inspection fees means that this use is already being subsidized by the general fund to cover staff costs for the required inspections, expanding the subsidy further would increase the required subsidy from the general fund. The Council must determine how best to balance the competing policy goals of cost recovery for services vs. support for urban agricultural goals.

Should the Council determine that the policy goals for Farm Markets outweighs other policy goals, it is recommended that a new Farm Market fee be included in the Building Code, Fire, and Zoning fees at the amount determined by the Council. Staff does not recommend a change to the existing fees for other Temporary Uses.

Councilman Smith said that when the Fees & Charges Manual was amended recently, the permit fees for farm markets went up and this item may have been overlooked. He said that in January when Council adopted the Food Action Plan, one of the items was to optimize permitting and the fee structure for farmer's markets. In March Council elevated the Food Action Plan to one of their top strategic priorities. In 2010, Council reviewed event fees for non-profits and created a 75% fee reduction for those non-profits because the missions they are undertaking are serving Council's strategic goals. Therefore, he asked Council to entertain that same 75% permit fee reductions for our farm markets in an effort to strengthen our food systems, move

closer to food security, decrease poverty, improve public health and strengthen the local commerce.

Councilman Hunt noted that by reducing the fee 75%, the City would see a decrease in anticipated revenue of $2,051.

Mr. Josh O'Connor, representing the Board of Directors of Oakley Farmer's Market, urged Council to consider reducing or eliminating permitting fees for farm markets in consideration of the recently adopted Food Action Plan. Reducing permitting obstacles (including cost) is important in developing farmers markets in local communities.

Councilman Hunt then moved to reduce the permit fees for farm markets by 75%. This motion was seconded by Councilman Bothwell and carried unanimously.

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING TO CONSIDER AN INSTALLMENT FINANCING CONTRACT WITH TD BANK FOR GREEN CAPITAL IMPROVEMENT PROJECTS

### RESOLUTION NO. 13-105 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN INSTALLMENT FINANCING CONTRACT AND CLOSING PROCESS WITH TD BANK FOR THE FINANCING OF LED STREETLIGHT UPGRADES AND FACILITY IMPROVEMENTS

Councilman Pelly moved to recuse Vice-Mayor Manheimer from voting due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously.

Deputy Finance Director Eric Hardy said that this is the consideration of a resolution authorizing the execution of a $1,100,000 installment financing contract for 'Green CIP' projects (the "Projects"). These property improvements include LED streetlight upgrades and facility improvements, such as window replacements at Fire Stations #7 and a boiler replacement at the Stevens Lee Recreation Center. This public hearing was advertised on May 3, 2013.

The City of Asheville Capital Improvement program (CIP) includes $1,100,000 previously appropriated by City Council to finance Green CIP projects.

The Finance Department posted a Request for Proposal on April 17, 2013 on both the City's website and on the NC State Interactive Purchasing System. Five proposals were received, the best of which was submitted by TD Bank with an interest rate of 1.44% per annum for a term of 10 years with semi-annual principal and interest payments ranging from $62,260 to $55,396.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and TD Bank for the financing of the Projects and authorizes the City Manager, City Attorney, Deputy Finance Director and City Clerk to execute and deliver any and all necessary documents, including a deed of trust to place a lien on Fire Station #7 in order to secure the City's obligations under the contract. Pursuant to a previously adopted reimbursement resolution, proceeds from this financing contract will allow the City to reimburse itself for the cost of the Project expenditures made thus far.

Pros:

- Provides funding of capital expenditures at a very favorable effective interest rate.
- Financing capital purchases spreads the cost of acquisition over several years of the useful life of the asset.

- Reimbursing this capital purchase with the proceeds of the financing, as opposed to paying for the purchase by using the City's available cash balances, increases the currently available funds by allowing the restoration of fund balance.

Cons:

- Financing the purchase slightly increases the lifetime cost of the acquisition due to the payment of interest on the amount financed.

The annual debt service payment for this financing is approximately $125,000 per year. Funds will be included in the City's Fiscal Year 2013-14 proposed debt service budget to cover this cost. Energy savings from the LED streetlight upgrades are being used to fund the debt service on Green CIP projects.

City staff recommends City Council adopt the resolution authorizing the City Manager to execute an installment purchase contract and closing process with TD Bank for the financing of the Green CIP Project.

Mayor Bellamy opened the public hearing at 6:24 p.m., and when no one spoke, she closed the public hearing at 6:24 p.m.

In response to Councilman Hunt, Mr. Hardy said that the loan is a fixed rate with a $1,000 closing cost.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hunt moved for the adoption of Resolution No. 13-105. This motion was seconded by Councilman Bothwell and carried unanimously (Vice-Mayor Manheimer was recused from voting due to a conflict of interest.)

**RESOLUTION BOOK NO. 35 – PAGE 300**

**V. UNFINISHED BUSINESS:**

**A. ORDINANCE NO. 4190 - ORDINANCE ESTABLISHING THE MULTIMODAL TRANSPORTATION COMMISSION**

Executive Director of Public Works and Multimodal Transportation Cathy Ball said that this is the consideration of an ordinance establishing the Multimodal Transportation Commission.

At the February 2013 Boards and Commissions meeting, staff presented a model for combining/augmenting various transportation and neighborhood related boards by forming a Multimodal Transportation Commission. This is the first step of hopefully have the Commission completely established by July 1. On June 11, Council will be requested to appoint members to the Commission and repeal the Transit Commission and the Greenway Commission.

Staff and/or Council members have met with the various Boards and Commissions and have tweaked the initial recommendations. The total membership on the board is proposed to be nine voting and three non-voting members.

The members of the Multimodal Transportation Commission would be made up of three members of the Greenway sub-committee, three members of the Transit sub-committee, and three members of the Bike and Pedestrian Task Force. There would be three additional non-voting members; one from the Planning and Zoning Commission; one from the Neighborhood Advisory Board; and, one from SACEE.

The appointments would be made through the following process.

1) Each of the sub-committees, task force and commissions would recommend the appropriate number of appointments to City Council for appointment to the Multimodal Transportation Commission.
2) City Council would review and make the recommend appointments or request another recommended appointment from the appropriate group.
3) The members would serve for three year terms, up to two terms for a maximum of six years. The first year appointment terms would be staggered to allow for continuity on the board.

This action complies with one of Council's Strategic Goals by supporting multimodal transportation planning.

Pros

- Compliments the organizational alignment of the organization.
- Reduces the number of Council Appointed Commissions by one.

Con:

- None.

There is no fiscal impact to this recommendation.

Council adopts an ordinance to create a Multimodal Transportation Commission.

In response to Mayor Bellamy, Ms. Ball explained how all the different master plans will be implemented with a comprehensive multimodal transportation master plan, which they have requested a grant from the Land-of-Sky to develop that comprehensive plan. We will start to grow the infrastructure network together.

Mayor Bellamy felt that the Commission needed representatives (non-voting) from the Land-of-Sky Regional Council and the new Park Authority (if that moves forward), since our systems are deeply integrated with Buncombe County.

Ms. Ball said that staff is committed to reporting back to Council in 6 months or 1 year on the progress of the Commission, but would be happy to add members now or after the initial period.

Councilman Hunt said that the County's advisory boards will change roles if the Park Authority moves forward. He felt that in the negotiations between Asheville and Buncombe County to create the Park Authority, there will need to be an alignment of various boards & commissions that are advisory. Rather than anticipate on how that might work, he felt that might be better dealt with through the negotiations. He agreed with the Mayor that the representation on the Commission is thorough.

Mayor Bellamy agreed with Councilman Hunt on the Park Authority representative; however, she felt was important to have the Land-of-Sky at the table of this new Commission.

Councilman Smith said that the Transit sub-committee will continue to exist and within that sub-committee there will continue to be the County appointment. That has been an important alignment with the County. He hoped that as the Multimodal Transportation Commission evolves and recognizes their needs, they can draw on that expertise. As Land-of-Sky and Buncombe County want to partner with the City on the goals from the comprehensive multimodal transportation plan, he would be supportive of that.

When Vice-Mayor Manheimer suggested contacting the Land-of-Sky first to make sure they want to participate on this Commission, Ms. Ball said that she would be happy to talk with them. When the appointment process for the Commission comes back to Council in June, the ordinance can be amended to add a non-voting seat from the Land-of-Sky. It will also give her an opportunity to get the thought of the other commissions as well.

Assistant City Attorney McGlohon asked that the staggered terms of office section be amended as follows: "Members of the Commission shall be appointed for 3 years. In appointing the original members of the Commission, the Council may appoint certain members for less than 3 years and thereafter the terms of all members shall not expire at the same time."

When Mayor Bellamy asked for public comments, none were received.

Councilman Hunt reminded the audience that this is Strive Not To Drive Week and highlighted some statistics that show our society is preferring not to own cars but to get around via other modes of transportation.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Manheimer moved for the adoption of Ordinance No. 4190 as amended. This motion was seconded by Councilman Hunt and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 224**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 13-106 - RESOLUTION APPOINTING A MEMBER TO THE GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY AND TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Greater Asheville Regional Airport Authority and to the Asheville Regional Airport Authority.

Due to the Authority's inability to recognize the seating of Vice-Mayor Manheimer, there currently exists a vacancy until June 30, 2016. This appointment must be a registered voter of the City of Asheville.

The following individuals have applied for the vacancy: Albert Anderson, Bradley Cain, Julian Jones, Aixa Wilson, Ken Hawkins, Charles Larrick, John Hayler, George Lycan and Grant Osborne. Two late applications were received from Douglas Tate and Phillip Kelley.

On April 9, 2013, City Council instructed the City Clerk to arrange interviews for Albert Anderson, John Hayler, George Lycan, Grant Osborne, Douglas Tate and Phillip Kelley.

After Council spoke highly of the candidates, Albert Anderson received 1 vote, John Hayler received no votes, George Lycan received no votes, Grant Osborne received no votes, Douglas Tate received 4 votes and Phillip Kelley received 2 votes. Therefore, Douglas Tate was appointed as a member of the Greater Asheville Regional Airport Authority and the Asheville Regional Airport Authority , to serve the unexpired term of Vice-Mayor Manheimer, term to expire June 30, 2016, or until his successor has been appointed.

**RESOLUTION BOOK NO. 35 – PAGE 303**

## B. BOARDS & COMMISSIONS

Regarding the Citizens-Police Advisory Committee, the following individuals have applied for the vacancy: Karl Katterjohn, Fred Cooke, Scott Steele and Grant Osborne. Because the vacancy is for a south representative and only one applicant from the south applied, it was the consensus of Council to re-advertise.

Regarding the Civil Service Board, the following individual applied for a vacancy: Carolyn Worthington. Because there are two vacancies on the Civil Service Board (including the Chair), it was the consensus of Council to re-advertise.

Regarding the Asheville-Buncombe Historic Resources Commission, the following individuals applied for the vacancies: Grant Millin, Ronald E. Burgin, Aixa Wilson, David Carpenter, Sue Russell, William Eakins and Woody Farmer. It was the consensus of Council to interview Sue Russell, William Eakins and Woody Farmer.

Regarding the Neighborhood Advisory Committee, because there are vacancies for 28801 and 28803 or 28704, 28806 and at-large representatives, it was the consensus of Council to re-advertise.

## VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Dan Bridges, volunteer for the handicapped enforcement program, was disheartened about issuing tickets and violators saying that they will get it written off by the City. He asked for the stripping of handicapped spaces be improved. Deputy City Manager Richardson said that he would be happy to have City staff look at improving the process including looking at the tag history of multiple abusers. He would report back to Council in the near term.

Mr. Timothy Sadler felt Council needed to make a commitment to public transportation.

Councilman Pelly invited the public to the Neighborhood Advisory Committee meeting on May 20, 2013, at 7:00 p.m. at the Recreation Center at 72 Gashes Creek Road, at which time they will discuss development issues in east Asheville.

### Closed Session

At 6:54 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: City of Asheville v. William Huskey (Buncombe County Superior Court Civil Action No. 09 CvS 2040). The statutory authorization is contained in G.S. 143-318.11(a)(3); (2) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(1); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 7:25 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

## VIII. ADJOURNMENT:

Vice-Mayor Manheimer adjourned the meeting at 7:25 p.m.

Magdalen Bourneson
CITY CLERK

MAYOR

Friday – May 17, 2013- 10:00 a.m.
First Floor North Conference Room - City Hall

Budget Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Executive Director of Finance & Strategic Planning Lauren Bradley provided Council with the budget schedule, and budget balancing considerations from April 23 (1) financial impact of various items remains uncertain (a) revenue reform proposed by the N.C. General Assembly; and (b) disposition of the City's water system; and (2) Culture and Recreation Authority.

Proposed Fiscal Year 2014 budget assumptions from April 23 include (1) budget Water Fund contribution to central services (a) offset potential loss of contributions by (i) capturing current year savings for fund balance contingency and (ii) deferring expenses until later in the year; and (b) this approach gives the City flexibility to adapt to changing conditions; permanent reductions would have to be considered if the water system is transferred; and (2) reduce revenue projects - offset loss with property tax increase; alternative is to consider additional service reductions.

Regarding the proposed Fiscal Year 2014 enhanced Capital Improvement Program (CIP), (1) implementation of enhanced capital improvements and economic development investments will require additional revenue (a) an additional $3 Million in the CIP would increase capital maintenance, infrastructure projects and fund Economic Development CIP including RADTIP and downtown projects; and (b) funding sources could come in from a combination of city revenues and other sources; and (2) staff would recommend considering a minimum of an additional $2 Million in capital improvements, $3 Million in additional investment would be optimal.

Ms. Bradley also provided Council with (1) responses to questions that were raised during the April 23 budget worksession (including 5% across the board reductions); (2) information on how proceeds from the sale of city-owned property could be allocated to support the development of affordable housing in Asheville; and (3) health insurance plan review.

Using a chart, she explained in detail three different budget assumption options for Fiscal Years 2014 and 2015 for the Cultural & Recreation Authority (CRA) along with the tax rate impacts. Option 1 would assume no CRA in the Fiscal Year 2014 budget with 1 penny for operating (or service reductions) as an option for balancing the Fiscal Year 2014 budget and no increase for Capital Improvement Plan (CIP). Option 1 would assume no CRA in the Fiscal Year 2014 budget with 1 penny for operating (or service reductions) and 3 pennies for CIP. Option 3 assumes the CRA impact in the Fiscal Year 2014 budget with no tax rate increase for operating and no increase for CIP.

Each Council member (except for Mayor Bellamy) voiced their support for Option 3 for various reasons, but if the CRA does not move forward, then Option 2.

In response to Councilman Hunt, City Attorney Oast said that he did not feel that there would be any budgetary resolution regarding the transfer of assets or functions of the water system to MSD by the end of June 30, at which time a budget will need to be adopted.

In response to Mayor Bellamy, City Manager Jackson said that with Ms. Bradley's leaving the City of Asheville, her finance duties will transition to Deputy City Manager Jeff Richardson.

At 10:38 a.m., Mayor Bellamy adjourned the meeting.

Magdalen Burleson
City Clerk

Mayor

Tuesday – May 28, 2013- 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Bothwell gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF CITY OF ASHEVILLE YOUTH LEADERSHIP ACADEMY STUDENTS**

Mayor Bellamy said that six years ago this June, she and the members of the Asheville City Council welcomed the inaugural class of the City of Asheville Youth Leadership Academy – better known as CAYLA. Since that very first day, CAYLA students have exceeded our highest expectations – as role models, as future leaders, as contributors to our greater community. CAYLA was designed to introduce Asheville's young people to professional careers, to assist them in their quest for college, and to develop their leadership skills through volunteering. It is without question that by this definition, CAYLA is a success – but only because the CAYLA students have made it so. Since 2007, more than 100 Asheville High School students have been selected to participate in the nationally-recognized City of Asheville Youth Leadership Academy. CAYLA places its students in prestigious, paid summer internships, and provides year-round workshops that emphasize leadership development and college preparation. This year's graduating CAYLA seniors have all been accepted to colleges across the state and region, including UNC-Chapel Hill, UNC-Greensboro, North Carolina A&T, Winston-Salem State, Johnson & Wales, Johnson C. Smith University, Berea College and Howard University. Collectively, Class of 2013 CAYLA students completed more than 30 community service projects representing more than 400 hours of service. Highlights of the CAYLA year include attending the first annual Me2We Conference on social justice and participating in a semester-long partnership with UNC-Asheville that explored the challenges of teen relationships through the creation of a public art installation.

The City of Asheville has gained much from their contributions, and we recognize and challenge them as they keep striving for excellence in the months and years to come.

As Mayor she was so proud of the young people who are being recognized today – the CAYLA Class of 2013.

With that, she read the names of the CAYLA students who were in the meeting this evening: Omar Alvarado, Nieva Arana, LaBrea Baird, Briana Bunn, Brandy Burgin, Jonaca Crooks, Brianna Crudup, Michael Davis, Emmanuel Figaro, Jalyn Folston, Monique Gaines, Caleah Hallum, Jaquell Hines, Ashare' Jefferson, Tyshaun Johnson. Tiffany Jones, Abel Lomeli-Garcia, Emmanuel Lomeli-Garcia, Terrence Lynch, Diana Marquez, William Middleton, Destiny

Nelson, Asia Porter, Kayla Reynolds, Owen Ruth, Symone' Simmons, Quanteria Sitton, Fiona Taylor, and Takidra Young.

Mayor Bellamy praised Erika Germer for her hard work on this program.

**B. PROCLAMATION PROCLAIMING MAY 25 - JUNE 1, 2013, AS "ASHEVILLE BEER WEEK" IN THE CITY OF ASHEVILLE**

Councilman Smith read the proclamation proclaiming May 25 - June 1, 2013, as "Asheville City Beer Week" in the City of Asheville. He presented the proclamation to Ms. Caroline Forsman, representing the Asheville Beer Week organization committee, who briefed City Council on some activities taking place during the week.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 14, 2013; AND THE BUDGET WORKSESSION HELD ON MAY 17, 2013**

**B. MOTION SETTING A PUBLIC HEARING ON JUNE 11, 2012, TO CONSIDER THE FISCAL YEAR 2013-14 ANNUAL OPERATING BUDGET**

**C. RESOLUTION NO. 13-109 - RESOLUTION SETTING A PUBLIC HEARING ON JUNE 11, 2013, FOR ECONOMIC DEVELOPMENT INCENTIVES (PROJECT X)**

Summary: The consideration of a resolution setting a public hearing for economic development incentives.

The City proposes to enter into an economic development incentive agreement with respect to an economic development project known as Project X. State law, N.C.G.S. 158-7.1, requires that a public hearing be held before cities make appropriations for expenditures for economic development purposes. Council's rules provide for public hearings to be set at Council's direction.

The resolution sets a public hearing in this matter for the regular Council meeting on June 11, and directs the publication of the required notice. The usual rules for public hearings will apply.

Adoption of the resolution is recommended.

**RESOLUTION BOOK NO. 35 - PAGE 308**

**D. RESOLUTION NO. 13-110 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SUN LIFE ASSURANCE COMPANY FOR SPECIFIC STOP LOSS INSURANCE**

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement for Specific Stop Loss Insurance Sun Life Assurance Company for specific stop loss insurance.

The City of Asheville is self-insured for medical and prescription drug expenses less than $150,000 paid during a contract year on behalf of all participants in the City's medical plan. The City purchases Specific Stop Loss Insurance to cover the cost of large or catastrophic claims paid during the contract period that exceed $150,000.

Premiums for Stop Loss Insurance are based on the Medical and Prescription Drug Benefits, demographic make-up of the participants, prior claims experience, industry standards, medical trends / inflation, the claims accumulation period and any known on-going medical conditions.

In an effort to promote Council's employer of choice strategic goal by providing the best and most cost effective insurance, the City of Asheville requested that our brokerage firm, The Ferguson Employee Benefit Agency, initiate a formal bidding process for Specific Stop Loss Insurance. The City received 6 proposals in response to our Request for Proposals. The Ferguson Employee Benefit Agency worked with staff to review these proposals.

After a thorough review the vendor selected is Sun Life Assurance Company.

This action aligns with City Council's Strategic Operating Plan in that it is an effort to promote Council's employer of choice strategic by providing the best and most cost effective benefit plan for our employees.

Pro:

- Specific Stop Loss insurance rates and terms were the most competitive when including the additional fees charged by BCBSNC for utilizing an outside stop loss insurance carrier.

Con:

- Increases the length of time between the City's payment of claims and Stop Loss Carrier reimbursement for claims that exceed $150,000 during the contract year by approximately 1 month.

This is a one year $761,000 Contract and funds have been budgeted and will be encumbered from the Health Care Fund to cover the cost of this contract.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign an agreement for Specific Stop Loss Insurance Sun Life Assurance Company.

**RESOLUTION BOOK NO. 35 - PAGE 309**

**E. RESOLUTION NO. 13-111 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH BUNCOMBE COUNTY FOR THE CTS WATERLINE INSTALLATION PROJECT**

**ORDINANCE NO. 4191 - BUDGET AMENDMENT FOR THE CTS WATERLINE INSTALLATION PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a Memorandum of Understanding (MOU) with Buncombe County for the CTS Waterline Installation Project and to execute any and all contracts up to $155,000.00 to implement the terms of the MOU; and a budget amendment in the amount of $155,000.00 from savings in other capital projects that were completed under budget.

Buncombe County is expecting to receive a grant to install waterlines in the areas surrounding the CTS site on Mills Gap Road. The County approached the City to request that they provide construction administration and oversight for the project. The County and City have agreed to a Memorandum of Understanding (MOU), which outlines the purpose, scope, schedule, and resources needed to ensure a successful project that will provide safe, potable water to residents within a one-mile radius of the CTS site.

The scope of the City's involvement will require the allocation of resources to: (1) review engineering plans and other documents necessary to bring the project to fruition; (2) oversee the acquisition and recordation of property easements required to construct and maintain the new water line; (3) oversee the construction bidding phase; (4) address all construction-related questions or concerns; and (5) other construction-related management activities as required for successful completion of the project and assumption of ownership and maintenance by the City.

If approved, the MOU should be executed by the City within a week of Council adoption. It will take another three to four weeks to advertise and award the construction administration contract. The construction administration will continue throughout the life of the project, which is expected to be completed by fall 2013.

This project is part of City Council's strategic plan to create a more collaborative and effective working partnership with Buncombe County.

Pros:

- This project will provide safe, potable water to residents within a one-mile radius of the CTS site.
- The County will reimburse the City for all construction administration expenses relating to the project.

Con:

- The Water Resources Department's involvement is not necessary in order for the waterline installation to occur. The department will be the liaison between Buncombe County and the Construction Administrator.
- The project will utilize Water Resources staff time for meetings, permit acquisitions, inspection services, payment processing, and documentation compilation even though an outside Construction Administrator will be hired to oversee the project.

The funds needed for this project will be transferred from other Water Resources capital projects that were completed under budget. In order to use the funds from the other project budgets, a budget amendment is necessary.

| | |
|---|---|
| Current Amount in CTS Waterline Installation Project | $ 0.00 |
| Budget Amendment Amount Needed | $155,000.00 |
| Total Amount | $155,000.00 |

The amount remaining in Water Capital Reserves will be reallocated to other capital projects as the need arises. Staff will seek Council approval on any future reallocation of these funds.

City staff recommends City Council approval of the City Manager to execute an MOU with Buncombe County for the CTS Waterline Installation Project and to execute any and all contracts up to $155,000.00 to implement the terms of the MOU; and a budget amendment in the amount of $155,000.00 from savings in other capital projects that were completed under budget.

**RESOLUTION BOOK NO. 35 - PAGE 310**
**ORDINANCE NO. 28 - PAGE** 228

**F. RESOLUTION NO. 13-112 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A RENEWAL OF THE ADOPT-A-PARK AGREEMENT WITH JUST FOLKS**

Summary: The consideration of a resolution authorizing the City Manager to sign a renewal of the Adopt-a-Park Agreement with Just Folks including a waiver for park use fees for Triangle Park for FY 2013-2014.

Just Folks is a local non-profit organization whose primary purpose is to support community-building activities in the Eagle/Market Street area. The members of the Board of Directors are all residents who grew up in the area and are actively engaged in efforts to improve the environment in Triangle Park by providing more positive uses of the park. Their focus on Triangle Park began eight (8) years ago when they were encouraged to produce cultural events in the park by a past City of Asheville Cultural Arts Superintendent. Last year City Council authorized the City Manager to sign an amended Adopt-a-Park agreement with Just Folks that included a waiver of park use fees and permit waivers for up to $2,500 for FY 2012-2013 to allow them to hold events in the park including music festivals, community cookouts and other community-building events in the park May to December on Saturdays and Sundays.

During FY 2013-2014, Just Folks has fulfilled the terms of the amended Adopt-a-Park agreement through activities that included:

- Conducting regular clean-ups
- Weeding and maintaining the planted beds
- Mulching paths and planting beds
- Providing volunteers to participate in these and other projects
- Providing the tools and materials to carry out regular maintenance and special approved projects
- Participating in the development of a mural project for the walls of the park assisted by thee Asheville Design Center and city staff and scheduled to be implemented in the fall of 2012.
- Holding a minimum of two (2) events each weekend during the course of the year, including music events and community cookouts that were free and open to everyone in the community.

The presence of Just Folks members and their programming in the park have continued to contributed to the reduction of nuisance behaviors in and around the park and improved appearance of the park, which has made the park more attractive to downtown visitors and community members and meeting specific City Council goals for economic and community development

Just Folks is requesting that their Adopt-a-Park agreement with the city be renewed for FY 2013-2014 and include waivers for park usage and event permitting fees at the same level of $2,500 approved for FY 2012-2013.

This action addresses City Council Strategic Goal for Asheville to be one of the safest and most secure communities compared to similar cities. The events held by Just Folks in Triangle Park proactively promote positive community interactions in the area and have significantly improved public safety in "The Block".

Pros:

- Strategic partnerships allow the city to leverage programming and events to reach a wider and more diverse audience.
- Provides additional quality cultural programming and diversity in a park that is generally not used for this type of event.
- Reduces staff time in processing fee wavier requests related to this group's events.
- This action is consistent with other partnerships the City has entered into for park programming in key community development areas.

Con:

- The reduction in permit fees result in lost revenue for the city; however, the city has not budgeted for this revenue.

The estimated value of the waived park usage fees is $2,500; however, this revenue has not been included in the budget.

Staff recommends that City Council authorize the City Manager to sign an Adopt-a-Park Agreement with Just Folks including a fee waiver for park usage fees associated with programming in Triangle Park.

**RESOLUTION BOOK NO. 35 - PAGE 311**

**G. ORDINANCE NO. 4192 - BUDGET AMENDMENT TO FUND SAFETY IMPROVEMENTS AND SITE ENHANCEMENTS AT HERB WATTS PLAYGROUND**

Summary: The consideration of a budget amendment in the amount of $7,487 to fund safety improvements and site enhancements at Herb Watts playground.

The Herb Watts Foundation donated $7,487 to the City for safety improvements and site enhancements at Herb Watts playground. The Parks, Recreation, and Cultural Arts Department will spend the funds on re-mulching the playground, sub-surface drainage improvements, and equipment replacement.

This action complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it strengthens partnerships with funding partners, and increases revenue opportunities through sponsorships.

Pro:

- Provides funding to increase playground safety

Con:

- None

The budget amendment will increase the operating budget in the Parks, Recreation and Cultural Arts Department by $7,487. The amendment is fully funded with proceeds from the donations.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to increase the Parks, Recreation and Cultural Arts Department budget in the amount of $7,487 to fund safety improvements and site enhancements at Herb Watts playground.

**ORDINANCE BOOK NO. 28 - PAGE 230**

**H. ORDINANCE NO. 4193 - BUDGET AMENDMENT TO PURCHASE EQUIPMENT AND FUND PERSONNEL COSTS AND TRAINING FOR MEMBERS OF THE ASHEVILLE HIGH INTENSITY DRUG TRAFFICKING AREA**

Summary: The consideration of a budget amendment, in the amount of $99,000 to authorize the use of Federal High Intensity Drug Trafficking Area (HIDTA) Funds to purchase equipment and fund personnel costs and training for members of the Asheville HIDTA.

The High Intensity Drug Trafficking Areas (HIDTA) program was authorized by the Anti-Drug Abuse Act of 1988 and is administered by the Office of National Drug Control Policy (ONDCP). The original designation of five HIDTA sites in 1990 has expanded into more than thirty areas around the country. The HIDTA's mission is to reduce drug trafficking in the most critical areas of the country, thereby reducing the impact of illegal drugs in other areas. The Asheville HIDTA will serve as a key drug trafficking reduction effort, critically positioned between

the Atlanta HIDTA and the Appalachia HIDTA. The Asheville HIDTA is comprised of members of the United States Drug Enforcement Administration (DEA), Asheville Police Department, Buncombe County Sheriffs Office, Henderson County Sheriffs Office and McDowell County Sheriffs Office. The Asheville HIDTA has received yearly funding from the ONDCP since 2010. The Asheville HIDTA is a component of the Asheville DEA Task Force. The City of Asheville will serve as the fiscal agent for the Asheville HIDTA. The Asheville HIDTA has received authorization for $99,000 in federal HIDTA funding. This proposed budget amendment would authorize the use of this funding for equipment purchases, personnel costs and training for members of the Asheville HIDTA.

This action conforms to the City Council's Strategic Operating Plan under 1) Fiscal Responsibility in that we are using federal HIDTA monies to enhance the Asheville HIDTA's equipment, personnel and training needs that would otherwise not be funded, and 2) Safe City in that providing the various equipment and training allows the Asheville HIDTA to be more professional and effective in proactively enforcing and preventing illegal drug trafficking.

Pros:

- Federal HIDTA monies to cover the cost of equipment, personnel and training related to reducing illegal drug trafficking in our region.

Cons:

- None noted

The increase of $99,000 is for equipment, personnel and training. Accepting these funds is a significant financial benefit to the Asheville HIDTA by allowing the task force to better equip and train the task force employees. There is no impact to the City's General Fund budget.

City staff recommends City Council adopt the budget amendment in the amount of $99,000, to authorize the use of Federal HIDTA funds to purchase equipment and fund personnel costs and training for the Asheville HIDTA.

**ORDINANCE BOOK NO. 28 - PAGE 232**

**I. RESOLUTION NO. 13-113 - RESOLUTION AUTHORIZING THE STANDARDIZATION PURCHASE OF THE ICS COMMUNICATIONS UNIT SUPPORT TRAILER FOR CONSISTENCY IN OPERATION AND FUNCTIONALITY**

Summary: The consideration of a resolution authorizing the Asheville Fire Department to purchase an ICS Mobile Communications Unit Support Trailer based on standardization needs.

The City of Asheville Fire Department has grant funds available through the Fiscal Year 2010 North Carolina Homeland Security Grant Program for the procurement of a Communications Unit Support Trailer. This equipment will enhance the ability of COA Police and Fire Departments and other regional Emergency Responders to communicate during a disaster or other emergency that requires coordination and communication between multiple jurisdictions. The equipment will also provide a vital resource that will aid in establishing an alternate Emergency Operations Center for the City of Asheville enhancing the continuity of operations. The procurement of standardized equipment will allow for interoperability of similar resources from multiple jurisdictions in NC. This interoperability provides certain efficiencies and eliminates duplications of efforts.

This action complies with the City Council Strategic Operating Plan by better equipping emergency responders to communicate during an emergency or disaster and by providing redundant means of emergency wireless communications.

Pros:

- An increased ability to communicate with responders from other jurisdictions.
- Increases responder safety and accountability of COA resources when responding mutual aid to other jurisdictions.
- Provides interoperability among similar resources throughout North Carolina.

Con:

- None identified

This purchase is funded by a grant previously approved by Council. Annual maintenance costs are minimal and will be supported by the State of NC and recurring grant opportunities.

City staff recommends City Council authorize the City Manager to receive grant money from the State of North Carolina Homeland Security Grant Program.

**RESOLUTION BOOK NO. 35 - PAGE 312**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. APPROVAL OF THE BY-LAWS FOR THE ASHEVILLE DOWNTOWN IMPROVEMENT DISTRICT INC.

Ms. Ruth Summers, Co-Chair of the Asheville Downtown Improvement District, Inc., said that they feel the Business Improvement District (BID) is a collaboration between the Board and the City and as such she requested City Council approve their by-laws. They understand that if the by-laws are adopted, the BID will continue to move forward in a grassroots effort. In fact on July 1 the BID, along with a lot of other corporations, will sponsor a clean-up day.

Councilman Davis said that a lot of work has gone into developing the by-laws in an effort to develop the BID. The Interim and Permanent Board have put in a lot of hard work and thousands of hours into this effort. However, in the economy we find ourselves in, City Council felt it would not be prudent to move forward with the taxing authority. He felt it is important to recognize the work done and the potential for the future. The efforts of the Board have made Council and citizens aware that there should be special emphasis on the needs in the downtown. Approving these by-laws is a way to say that we understand there is that need and in the future if a BID is established, the by-laws will be in place.

Councilman Bothwell appreciated all the efforts gone into the BID. He felt at this point the BID Board is a volunteer group like any other neighborhood group and he couldn't see why the City would approve the by-laws of a neighborhood group. Absent knowing where the downtown residents stand on a BID he would have to vote against approving the by-laws.

Councilman Smith agreed that we have to maintain our downtown vibrancy. He thanked everyone who contributed to that realization. Unfortunately with the big tax shift and financial uncertainties, we would not be able to move forward with the BID taxing authority. He noted that over the next five years approximately $8.5 Million is included in the City Manager's budget for the downtown. He didn't think this is the right time to approve the by-laws and not fund it. He

didn't want to give the impression that we will be approving the BID any minute. He agreed that the by-laws will probably form the basis of a future BID, but now is not the right time.

Councilman Hunt viewed this request as not an indication that City Council is committed to a BID, but for the corporate structure to move forward. He also noted that there are clean and green services provided in our coming budget. He felt it was appropriate to acknowledge the work of the BID Board and approve their by-laws.

Mayor Bellamy said that we are not establishing a taxing authority. She will support the approval of the by-laws in order for them to achieve 501 (c) (3) status and allow them to apply for foundation grants. Because the City Council makes appointments to the Board, she felt it was important to have a say in how it's governed and formatted.

Councilman Davis moved to approve the By-Laws for the Asheville Downtown Improvement District Inc. This motion was seconded by Councilman Hunt and carried on a 5-2 vote, with Councilman Bothwell and Councilman Smith voting "no."

**B. WNC REGIONAL AIR QUALITY AGENCY UPDATE**

Dr. Deal Kahl, Vice-Chair of the WNC Regional Air Quality Agency, briefed Council on their activities of the past year and goals for the upcoming year.

Dr. Kahl and Executive Director of the WNC Regional Air Quality Agency David Brigman responded to various questions from Council.

On behalf of City Council, Mayor Bellamy thanked Dr. Kahl for his leadership and the entire Board for their dedication.

**C. LEGISLATIVE & WATER UPDATE**

Deputy City Manager Jeff Richardson highlighted the following legislative issues of interest: House Bill 488 - Transfer Control of the City of Asheville's Water System to a Regional Entity; House Bill 252 - Asheville Transfers; House Bill 418 - Park Authority; House Bill 224 - Asheville Extraterritorial Jurisdiction and Annexation; House Bill 568 - Asheville Deannexation; Senate Bill 394 - Lower Tax Rates for a Stronger North Carolina Economy; Senate Bill 363 - Business Tax Reduction and Reform; House Bill 708 - Study Public Enterprise Systems/Use of Funds; House Bill 962 - Municipal Sales Tax; House Bill 94/Senate Bill 112 - Amendment to Environmental Laws 2013; Senate Bill 612 - Regulatory Reform Act of 2013; House Bill 664 - Cell Tower Deployment Act; Senate Bill 677 - Local Government Regulatory Reform; House Bill 937 - Amendment to Various Firearms Laws; and House Bill 714/Senate Bill 443 - Disposition of Abandoned Firearms.

**D. ASHEVILLE METRO AREA ZERO ENERGY DISTRICT**

Councilman Bothwell said that the Asheville Metro Area Zero Energy District (AMAZED) explained that the Zero Energy District (ZED) is a place where residents and businesses aim to produce as much energy as they use. A ZED can be (1) a specific geographic area; or (2) a virtual "district" in which anyone can participate. The long term goal is to make Asheville energy-independent and to keep more money in our pockets. AMAZED aims to educate people about affordable energy solutions, to encourage residents to take action today, and to make bigger steps tomorrow.

The present solution is that today Asheville derives most of its electricity from the coal-fired power plant at Lake Julian. This requires train-loads of coal blasted from mountaintops in Kentucky. It pours pollution into our air. It also creates tons of toxic coal ash. It sends our dollars to Duke Energy/Progress and Peabody Coal.

Progress so far has been that the City of Asheville has been reducing City energy use by 4% per year since 2007. Asheville residents have cut their water use significantly in recent years and they are recycling champions. Ashevillians also have the highest per capita ownership of hybrid cars in North Carolina.

Potential alternatives include (1) teach AMAZED participants three simple things they can do today to save money (a) unplug your microwave, stereo, television and other appliances when they aren't in use - "vampire" loads cost $10-30 per year; (b) never leave a television or radio on when you aren't home - average television cost 20-cents per hour; and (c) always do laundry with cold water - save 40-cents per load. Plus you can join the Duke EnergyWise Program and save $75 per year; (2) create short classes to teach AMAZED participants the next three steps and encourage them to share those ideas; (3) create a competition between neighborhoods on who can save the most energy; and (4) help establish funding streams for more ambitious retrofit and solar projects.

A FortZED was established in Fort Collins, Colorado, in 2011 and it's attracting new industry to the City. In Fort Collins, (1) more than 7,000 customers participate - residential and commercial; (2) reduce peak demand by 20-30%; (3) expanding to include thermal energy and transportation; and (4) New Belgium Brewery produces over half the electricity it uses during peak solar hours.

Preliminary participants include Asheville Green Opportunities, Asheville Independent Restaurant Association, Blue Ridge Sustainability Institute, EarthFare, EvolveEnergy, New Belgium Brewery, Sierra Club Beyond Coal Campaign, Smith Mill Creek Premaculture School and WNC Green Building Council.

He invited those that wish to learn more to the meeting on May 30 at the Dr. Wesley Grant Sr. Southside Center.

**E. QUARTERLY REPORTS**

**Committee Chair Reports**

Vice-Mayor Manheimer, Chairman of the Finance Committee, provided Council with a brief update on some major accomplishments during this quarter.

Councilman Bothwell, Chairman of the Public Safety Committee, provided Council with a brief update on some major accomplishments during this quarter.

**Strategic Operating Plan**

Deputy City Manager Jeff Richardson provided Council with an updated table of the quarterly updates on key strategic initiatives associated with the five six areas of the City of Asheville's Strategic Plan for the first three quarters July 1, 2012 – March 31, 2013. He also provided Council with the quarterly updates for Economic Indicators and Crime Index.

**Financial Report**

Budget Manager Tony McDowell provided Council with the following financial information which reflects the City's overall financial position for the fiscal year through March 2013.

*Amendments.* The General Fund budget presented in the third quarter report reflects the adopted budget of $89,922,437 along with eleven budget amendments approved by Council that totaled $1,264,612. A summary of the amendments is presented below. The only amendment that involved an appropriation from fund balance was the $650,000 approved for employee

bonuses. The $63,000 for the firing range mitigation project was appropriated from unexpended capital funds that were being held in reserve.

| | |
|---|---|
| Adopted Budget | $89,922,437 |
| Budget Amendments: | |
| NC Arts Council Grassroots Arts Grant | 50,431 |
| Linamar ED Incentive | 200,000 |
| Firing Range Mitigation Project | 63,000 |
| Public Housing Police Unit Partnership | 217,000 |
| RENCI Grove Arcade Lease | 36,096 |
| Plasticard Locktech ED Incentive | 13,400 |
| Employee Bonus** | 650,000 |
| Community Center Grants | 7,834 |
| Energy Rebates | 21,801 |
| Bicycle Wayfinding Grant | 1,050 |
| Bojangles Easter Eggstravaganza Sponsorship | 4,000 |
| 3/31/2013 Budget | $91,187,049 |

** Fund Balance Usage

*Revenues.* Through March 31, 2013, the City has collected $74,680,403 in General Fund revenue, which represents approximately 82.5% of the total General Fund revenue budget. Revenue collections through the first nine months of the previous fiscal year were at 83% of budget, so collections this year are almost identical to the previous year's percentage through three quarters. The City has received nine months of sales tax revenue, and collections are up 5.9% compared to the prior year. Sales tax revenue is now projected to exceed budget by $175,000. Property tax and state utility tax revenue continue to lag behind budget. Overall, staff is currently estimating that total FY 2012-13 General Fund revenue will come in under budget by $272,000 or 0.30%.

*Expenditures.* General Fund expenditures through March 31, 2013 total $60,412,963 or 66.3% of the budget. One year ago expenses were at 68.2% of budget at this same point in the fiscal year. As discussed during the recent budget worksessions, to hedge against uncertainty in next year's budget, staff has set aside $1 million in unexpended funds from the current fiscal year in unassigned fund balance to be used as contingency in FY 2013-2014. The General Fund year end estimates on page 3 of this report reflect the additional savings that been identified toward this budget savings target.

*Fund Balance.* The City ended FY 2011-12 with available fund balance of $13.63 million, which equated to 15.9% of FY 2011-12 expenditures. At the November 13th meeting, Council approved the use of $650,000 in fund balance for one-time employee bonuses. *Factoring in the savings mentioned above, staff estimates that available fund balance at June 30, 2013 will be $14.5 million or 16.2% of estimated expenditure, which will be approximately $1.0 million over the 15% fund balance policy target.*

**F. PRESENTATION OF THE FISCAL YEAR 2013-14 ANNUAL OPERATING BUDGET**

Executive Director of Finance and Strategic Planning Lauren Bradley said that the budget goals were to enhance Asheville's economic prosperity and quality of life by addressing the City's long-term financial sustainability (1) Seek opportunities to restructure services to gain efficiencies; (2) Invest resources in core services and infrastructure to achieve strategic goals and build tax base; (3) Maintain affordability for citizens and businesses in Asheville; (4) Invest in our workforce and continue to recognize and reward innovation; and (5) Build a budget based on financially sound principles to ensure stability in an uncertain economic and legislative environment. She

then showed a chart of inflation adjusted General Fund spending and an illustration of structural gap.

Legislative assumptions include (1) Disposition of the City of Asheville's water system: The budget assumes continued operation and management of the system since the length and outcome of the legal challenge is unknown. The budget proposes to defer some expenses and set aside fund balance as a contingency; (2) State-wide Tax Reform: Because the final outcome of tax reform is not yet quantifiable, the proposed budget assumes a $1 million decrease in State revenues, the net difference between assuming the loss of utility taxes and a partially off-setting increase in sales tax revenue. The proposed budget plans to make up this loss with mid-year savings generated by the creation of the Culture and Recreation Authority; and (3) Creation of a county-wide Culture & Recreation Authority (CRA): The city's proposed budget assumes all parks, recreation and cultural arts services except for community centers would be transferred to the authority effective January 1, 2014. This move would reduce expenditures in FY 2013-2014 by $2.5 million

Regarding the revenue neutral tax rate, she said the revenue-neutral tax rate, as defined by G.S. 159-11(e), is the rate that is estimated to produce revenue for the next fiscal year equal to the revenue for the current fiscal year if no reappraisal had occurred. For Fiscal Year 2013-2014, the City of Asheville has calculated the revenue neutral tax rate to be 43 cents per $100 valuation.

Regarding General Fund Revenues: (1) Revenue Neutral Tax Rate of 43 cents per $100 valuation; (2) Revenues projected to increase by .6% (a) 1.5% growth projected in property tax revenue; (b) 8.5% growth projected in sales tax revenue; and (c) $1.9 million decrease in revenues as a result of proposed legislation; and (3) No fund balance appropriation; $1 million above 15% policy requirement held as contingency. Revenue Enhancements - $7.00 monthly solid waste fee replaces $3.50 recycling fee. She then showed a breakdown of the General Fund revenues.

Regarding General Fund Expenditures: (1) 3% cost of living adjustment for city employees; (2) General Fund expenditures up only 0.6% over FY 2012-2013 (a) Assumes transfer of parks and recreation services January 1; (b) Includes contracting out street and sidewalk construction services; (c) $500,000 in savings from frozen positions; and (d) $500,000 in savings from line item reductions; and (3) General Fund contribution to pay-as-you-go Capital Improvement Plan (CIP) remains flat but includes the issuance of additional debt. She then showed a breakdown of the General Fund expenditures.

She then reviewed the other funds: (1) Water Fund (a) Water rate increases expected to generate $300,000 in new revenue (1% on residential, multi-family and small commercial consumption; 3% on large commercial consumption); (b) Expenditures adjusted down to reflect actual; and (c) Contribution to capital is increasing by $9.8 million as a result; $18.2 million in CIP; (2) Stormwater Fund (a) Stormwater fees remain unchanged; and (b) Budget includes $641,000 in capital funding for rolling stock replacement & capital maintenance projects; (3) Transit Fund - The proposed budget includes an expected $100,000 reduction in State funding for transit. The General Fund transfer to the Transit Fund has been increased by this amount to offset this loss in State funding; (4) Parking Fund (a) Budget includes 25 cent increase in the hourly rate for parking meters and garages; expected to produce approximately $400,000 in additional revenue from parking fees; and (b) Revenue used for central service expenses and CIP; (5) US Cellular Center Fund - Early event bookings indicate that operating revenues will likely increase in FY 2013-14. Revenues are expected to be similar to what was collected in FY 2010-11. Nonetheless, the Center will hold two FTE positions in the concessions division vacant in FY 2013-14 as a budget balancing strategy; (6) Golf Fund - Budget includes lease of municipal golf course to Pope Golf, Inc., a move that had a positive financial impact of approximately $210,000 by eliminating the General Fund subsidy and providing for a lease payment to the city. The proposed budget includes a lease payment of $75,000; and (7) Internal Service Fund (a) City's

and employees' contributions to health care remain flat in FY 2013-2014; (b) Includes a reallocation of workers compensation and property/casualty costs across all funds based on actual claims history; and (c) Proposed FY 2013-14 budget includes the second year contribution ($400,000) from the General Fund of a step-up plan to meet the City's annual required contribution for Other Post Employment Benefits (OPEB) to the State Treasurer's OPEB Investment Fund.

She then showed breakdowns of Fiscal Year 2013-14 CIP Revenues and CIP Expenditures.

Regarding the Economic Development CIP Fund (1) Revenues (a) Debt Proceeds ($11.45 Million); and (b) Land Sales ($150,000); (2) FY 14 Possible Projects include: RADTIP, Affordable/Workforce Housing, Parking Deck Construction, Multi-Modal Improvements, Underground Utilities, and and Asheville Art Museum Renovations; and (3) If CRA is not implemented, tax increase may be needed in FY 15 to fund debt service.

Looking ahead (1) The economic crisis of the last several years has required us to re-evaluate the paradigms that have been governing the public sector for several decades; (2) Asheville has charted a course for achieving long-term financial sustainability by reinventing the way we deliver services, investing in our workforce and making smart investments in job creation and infrastructure that promise to build tax base; (3) These actions will allow Asheville to continue to support our community's quality of life while implementing our strategic goals for the future; and (4) Must remain adaptive to change given the uncertainty in the economic and legislative environments.

Staff will continue to work with Buncombe County on formalizing the Culture & Recreation Authority. June 11 will be the budget public hearing with adoption on June 25.

Ms. Bradley responded to various questions from Council regarding the budget, some being, but are not limited to: why there is no allocation in Fiscal Year 2014 for the downtown clean and green initiative; what is the green part of the "clean and green" initiative; explanation of the Affordable Housing Trust Fund allocations; and what kind of investments will be in the South Slope.

On behalf of City Council, Mayor Bellamy thanked Ms. Bradley for her work with the City of Asheville and hoped her success in her future endeavors.

**Closed Session**

At 7:04 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: State of North Carolina; City of Asheville; and Metropolitan Sewerage District of Buncombe County. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(11); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 7:20 p.m., Vice-Mayor Manheimer moved to come out of closed session. This motion was seconded by Councilman Pelly and carried unanimously.

**IV. PUBLIC HEARINGS:**

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A. **PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING OF ASHEVILLE ACADEMY, LOCATED AT 1709 HENDERSONVILLE ROAD, TO FACILITATE THE DEVELOPMENT OF AN 8,215 SQUARE FOOT DAYCARE FACILITY**

**ORDINANCE NO. 4194 - ORDINANCE TO AMEND THE CONDITIONAL ZONING OF ASHEVILLE ACADEMY, LOCATED AT 1709 HENDERSONVILLE ROAD, TO FACILITATE THE DEVELOPMENT OF AN 8,215 SQUARE FOOT DAYCARE FACILITY**

Urban Planner Julia Fields said that this is the consideration of an ordinance to amend the conditional zoning of Asheville Academy, located at 1709 Hendersonville Road, to facilitate the development of an 8,216 square foot daycare facility. This public hearing was advertised on May 17 and 24, 2013.

Ms. Fields said that this is a request for an amendment to the conditional zoning approval for Weirbridge Village to allow for child care centers as a permitted use on the commercial portion of the development.

In 2006, 20.66 acres of property located at the corner of Hendersonville Road and Racquet Club Road were conditionally zoned from RM-6 (Residential Multi-Family Low Density Development) District to HBCZ (Highway Business Conditional Zoning) to allow for the development of a major multi-family housing development (originally proposed as 336 units) with commercial outparcels along Hendersonville Road. As proposed, the commercial portion of the development was shown as suburban commercial outparcels abutting Hendersonville Road. As opposed to traditional suburban commercial outparcels where there are separate curb cuts for each outparcel, however, the developer proposed access for all commercial parcels off of an interior road (Weirbridge Drive) that runs parallel to Hendersonville Road.

The commercial development was restricted under this approval to no more than five commercial parcels with no commercial parcel being greater than 3 ½ acres in size. No big box stores, night clubs, bars, adult uses or dance clubs are allowed and commercial uses are limited to: financial institutions, pharmacies, restaurants, professional offices, retail sales, bakeries, barber shops and salons, bookstores, medical clinics, delicatessens, florist, gift shops, grocery stores, and health and fitness facilities. No 24-hour uses were permitted other than bank ATMs and pharmacies. Architectural standards were required to be placed on the commercial buildings to require them to mirror the materials in the residential architecture of the residential buildings. No commercial building can be greater than 25,000 square feet GFA in size or greater than 30 feet in height. Outdoor storage is not permitted.

Since the initial conditional zoning approval, four amendments have been approved for the project. One reduced the number of dwelling units from the originally approved 336 to 280 and reconfigured the location and reduced the number of the buildings housing the dwelling units. A second amendment approved a comprehensive sign package for the development. Subsequently, two outparcels (financial institutions) have been developed with access off of Weirbridge Drive. A third amendment provided for a right-turn in/right turn-out access point to the undeveloped portion of the commercial parcel. A fast food restaurant is being developed at this location. A fourth amendment approved by City Council on April 9, 2013, added menu board signage to the originally approved sign package.

The applicant is now requesting an amendment to the conditional zoning approval to allow child care centers on the commercial portion of the property. This use was not included in the originally approved permitted use listing.

Planning staff concludes that the use itself is very compatible with other uses approved for this development. The central issue for the proposed use is related to traffic – both traffic

impact and safe maneuvering. To address that concern, a traffic study has been conducted for the proposed use and adjoining fast-food restaurant.

On May 1, 2013, the Planning and Zoning Commission reviewed and approved this matter 7-0. The only comments provided were those of the developer and the development team. The Commission recommended approval with the following conditions agreed to by the developer: (1) The conditions recommended in the TRC staff report; (2) All standard conditions being met; (3) The recommendations found in the traffic study; and (4) The developer considers providing an additional pedestrian crosswalk at some area conducive to pedestrian traffic coming from the residential area. She explained that developer has already addressed condition 4 with the City's Transit Engineer, who felt another pedestrian crosswalk would be unsafe, therefore; staff recommends condition number 4 not be a condition imposed on the developer.

Pros:

- The proposed amendment allows for the compatible use of child care centers at Weirbridge Village.
- A traffic study and recommendations have been completed for this use with recommended traffic patterns and practices.

Con:

- Even with the recommended traffic patterns, traffic congestion could be a problem although perhaps no more congestion than would result from other uses already allowed.

Based on the analysis provided in the report, staff finds this request to be reasonable and recommends approval.

Mayor Bellamy opened the public hearing at 7:28 p.m.

Mr. Clay Mooney, representing the developer, requested this amendment to utilize the day care use. He explained this day care center is a relocation of an existing day care within one-half mile of this location. The day care will operate from 7:30 a.m. - 5:30 p.m. Monday through Friday. This facility will have 180 children. They did perform a traffic study and because they had real world counts, they came up with recommendations on how to improve circulation, noting that the developer agrees with all the conditions. He also noted that parents of the children in the child care center will have an orientation meeting and they will be given a map of the traffic pattern which they must agree to.

Mayor Bellamy closed the public hearing at 7:32 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

In response to Councilman Pelly regarding earlier concerns of access for Crowfields residents, Mr. Mooney said that Crowfields is moving forward with survey work to get the location surveyed and the hiring of an engineer.

Councilman Pelly found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4194 to amend the conditional zoning of Asheville Academy, located at 1709 Hendersonville Road, to facilitate the development of an 8,215 square foot daycare facility, subject to the following conditions: (1) The conditions recommended in the TRC staff report; (2) All standard conditions being met; and (3) The recommendations found in the traffic study. This motion was seconded by Councilman Hunt and carried unanimously.

**B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF BILTMORE HILL, LOCATED AT 63 BROOK STREET, FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS II DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 24,958 SQUARE FOOT MIXED USE BUILDING AND A 7,707 SQUARE FOOT SEVEN UNIT MULTI-FAMILY HOUSING BUILDING**

**ORDINANCE NO. 4195 - ORDINANCE TO CONDITIONALLY ZONE BILTMORE HILL, LOCATED AT 63 BROOK STREET, FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS II DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 24,958 SQUARE FOOT MIXED USE BUILDING AND A 7,707 SQUARE FOOT SEVEN UNIT MULTI-FAMILY HOUSING BUILDING**

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone the project identified as Biltmore Hill Project, located at 63 Brook Street from RS-8 Residential Single-Family High Density District and Community Business II District to Community Business II District/Conditional Zoning for the development of a 24,958 square foot mixed use building and a 7,707 square foot seven unit multi-family building. This public hearing was advertised on May 17 and 24, 2013.

Ms. Bernstein said that the applicant is requesting a Conditional Zoning for four parcels located at 63 Brook Street and 2 Warren Avenue from CBII (Community Business II) and RS-8 (Residential Single-Family High Density District) to CBII – Conditional Zone in accordance with Section 7-7-8 of the UDO, for the construction of a mixed use development.

The project site consists of four separate parcels with a combined area of approximately 1.66 acres with frontage on Brook Street, Reed Street and Warren Avenue in Biltmore Village. The two parcels fronting on Brook and Reed Streets are zoned Community Business II (CBII) and are within the Biltmore Village Historic District Overlay. One parcel along Brook Street is entirely CBII and the other has frontage on both Brook Street and Warren Avenue and is split-zoned with both CBII and RS-8. The rear parcels along Warren Avenue are entirely zoned RS-8. Nearby and adjacent zoning districts include CBII, CBI, CI, Institutional and RS-8.

The site along Brook Street is currently the location of a mostly-vacant single-story commercial strip building (location of Old School Subs & Deli and an auto repair shop) and the site accessed from Warren Avenue contains a single-story residential structure and shed. All existing structures are to be demolished.

With this conditional zoning, the applicant is proposing the construction of two new buildings. Due to the existing grade change dividing the project area, the building sites will function as two separate developments on one parcel. There is no interaction between the two structures and each has separate parking and access.

The larger development is a two-story building placed at the corner of Reed and Brook Streets. This structure is proposed for retail uses along the ground level with six (6) residential units on the second-story (five 2BD units; one 3BD). The building is 30 feet tall (46'5" to tallest roof peak) and has a total area of 24,958 square feet (14,872 square feet is retail use – approximately 4-5 separate retail spaces, depending on final tenants). This building falls under the Historic Resources Commission's (HRC) design review.

The second structure is located above (rather than behind) the mixed-use building and is accessed from Warren Avenue, due to a grade change of approximately 50 feet from Brook Street up to the rear end of the project site. This building is exclusively residential and contains seven (7) two-bedroom units on three levels (four levels when viewed from Brook Street) and a building height of 30 feet – 42'2" to the tallest roof peak. Because of the continuing grade change, the single-family dwelling across the street from the structure will be approximately at the level of the third floor. This building does not require compliance with Biltmore Village design guidelines.

The project site currently consists of both RS-8 and CBII zoning classifications. The area zoned RS-8 is just under one acre, which would permit a maximum of eight residential units (although not in a multi-family configuration). With the rezoning, seven units are proposed in this area. The parcels along Brook Street are already zoned CBII, an area approximately 1.1 acres in size, and would be allowed to have 17 units. The maximum density allowed for the entire rezoned project site is 26 units – 13 are proposed. While a greater number of residential units would be permitted, the topographic challenges are a limiting factor. Also, limiting the number of units in the residential structure will result in a development that is more compatible with the single-family neighborhood across Warren Avenue.

There are two driveway cuts proposed on Brook Street to access the mixed-use building; one provides an entrance only and the second allows for both right and left-turn exit movements. New five-foot wide sidewalks are shown along Brook and Reed Streets. The new sidewalks will be brick, according to HRC design guidelines. There is no access provided within the site between the two buildings, pedestrian or otherwise.

The applicant is proposing improvements within the right-of-way of Brook Street/Sweeten Creek Road with traffic calming and crosswalks similar to what is already in place further east (in front of 10 Brook Street). Additionally, the proposal includes pedestrian crosswalks along the route to the off-site parking

Access to the residential building is from a single driveway off of Warren Avenue. No sidewalks are proposed for Warren Avenue (fee-in-lieu requested). The street is not identified as a needed linkage and proceeds to a dead-end shortly beyond the building side. Additionally, the topography would make construction difficult.

A minimum of 49 spaces is required for the mixed-use building. Plans show parking 21 parking spaces (2 HC accessible) and indicate that 28 additional spaces will be made available at an off-site location (2 Fairview Road) through a shared parking agreement. Bike parking is included.

The separate parking lot for the residential building includes 10 spaces (1 HC accessible) as well as a bike rack in this location as well.

Landscaping is required on the site and includes a property line buffer along Warren Avenue, street trees on Brook, Reed and Warren, parking lot and building impact landscaping, street buffer and dumpster screening. The property line buffer can be administratively approved for a width reduction due to the existing vertical separation on the lot, according to Section 7-11-3(e)(1).

Since the proposal functions more as two separate developments, open space will be split for this project. The Brook Street portion of the property will be subject to "urban open space" requirements, which is provided via the hardscaped elevated walk as well as green space (five percent or 2,897 square feet required - 4,302 square feet shown on plans). The residential building along Warren Street is subject to "suburban open space" requirements of fifteen percent; provided via the walking path and open area in front of the building (2,157 square feet required – 2,380 square feet provided).

There are significant retaining walls included with for development, up to 26 feet tall in areas, according to conceptual plans. All walls over 8 feet in height will need to comply with aesthetic requirements. Landscaping is required when walls are taller than 6 feet in height and closer than 35 feet to the road (Warren Avenue) and for any portions taller than 20 feet, regardless of proximity to the road (several locations). The appearance of the walls along the lower portion of the site will be reviewed by the HRC.

Because this is a through-lot, a 30 foot, type B property line buffer is required along Warren Avenue as the "secondary frontage." The UDO allows for *administrative approval* of alternative compliance in the event of a vertical separation on the lot greater than 15 feet. The buffer width will be reduced to 15 feet.

The proposal was approved with conditions by the Technical Review Committee on April 1, 2013. A (voluntary) community meeting with representatives from the Biltmore Village Merchants Association was held on April 11, 2013.

The Planning & Zoning Commission reviewed this project on May 1, 2013, and recommended approval with a 6-1 vote. There were concerns expressed regarding the sharp, steep curve to access Warren Avenue from Reed Street when heading south from Biltmore Village. The City Transportation Engineer stated that it would not be considered to be a dangerous intersection. Staff followed up with Public Works as well, and the Assistant Director noted that while it is a tight curve, it would not be considered as a safety concern from their perspective especially given that there are multiple other access points to Warren Avenue.

Staff has spoken with two of the three property owners across Warren Street. One was favorable of the proposal and the other had concerns regarding loss of view, increased traffic and ensuring completion of the project.

Because the portion of the property along Brook Street is within the Biltmore Village Historic District Overlay, design review for compliance with all district guidelines is required. The applicant had a preliminary review with the Historic Resources Commission (HRC) on January 9, 2013, and preliminary comments have been addressed. Upon receiving approval of the conditional zoning request by City Council, the applicant will return to the HRC for final design review.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   This site has a +/- 50 foot grade change from Brook Street up to Warren Avenue which lends itself to dividing the site, as it is in its currently developed state, with retail at the bottom and residential at the top. The proposed improvements will require significant retaining structures to secure the slope, including lower walls around the rear of the

Brook Street parking area (the aesthetics of which are subject to design approval by the Historic Resources Commission). There will be larger retaining walls and building foundation walls below the residential building. These retaining structures will be subject to technical review during the building permitting process.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The development is expected to complement the adjacent shops and uses and add to the fabric of Biltmore Village in a valuable way. Roadway improvements will visually extend the Biltmore Village Historic District and will enhance and improve the pedestrian experience. While the apartment building is not entirely consistent with the development pattern in the immediately surrounding neighborhood, the edges of this neighborhood contain larger structures such as office buildings and hotels. The residential use is complementary and is not expected to injure the value of abutting properties.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The mixed-use building and associated improvements proposed along Brook Street are aligned with nearby development in terms of scope, scale and use. Adherence to the Biltmore Village Design Guidelines ensures visual harmony and compatibility. The residential building is not subject to compliance with the design guidelines, however, like materials and a similar style have been incorporated.

   The scale of the residential building on Warren Avenue is greater than the single-family homes immediately across the street. The building is proposed to be three stories in height (when viewed from Warren Avenue) which is 30 feet per UDO definition of building height (and below the maximum height in residential zoning districts). The confronting homes will, however, be approximately at the visual level of the third floor due to the grade change along Warren Avenue. The tallest point on the structure is shown as 42'2" to the highest roof peak.

   The potential impact of a taller structure in this location is mitigated by the continuous elevation gain heading south across Warren Avenue. At 2 Warren Avenue (project site), the existing elevation is approximately 2050 feet. Across Warren, the elevation is approximately 2075 feet at the rear of that parcel, gaining 25 feet. Moving further south to the Biltmore Inn property, the elevation is approximately 2105 feet, a gain of more than 50 feet.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
Elements of the overall project are directly aligned with the City's goals and objectives including multi-modal transportation elements (sidewalks, bike racks, transit shelter), economic development and residential infill development.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
This site in Biltmore Village place the project in an easily accessible location by car, foot, bicycle and is along an Asheville transit route (SI). The project has been reviewed by the Technical Review Committee and has been found to have adequate access to infrastructure.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

This project proposes offsite parking along Fairview Road and extending the traffic calming medians along Brook Street. A traffic study is being conducted to address the functionality of the additional traffic calming devices and ability of the highway to handle the traffic with them installed. It will also determine if an ADA accessible route can be achieved from the project to the proposed offsite parking location. The project is not expected to create a traffic hazard or undue congestion, pending the results of the traffic study.

Pros:

- City goals support mixed-use development, especially providing residential uses in a walkable location proximate to transit
- Streetscape and roadway improvements will improve the pedestrian experience
- Design review of the Brook Street building by the HRC ensures historic appropriateness to Biltmore Village and aesthetic cohesiveness, extending the "look" of the Village to this eastern edge

Con:

- The residential building along Warren Street is a larger scale than the single-story homes immediately across the street (although there are larger, taller structures a couple of blocks within the residential neighborhood).

Based on the above findings, staff recommends approval of the conditional zoning request as requested by the applicant. While the residential building is larger than the homes immediately across Warren Avenue, there are larger structures both within this residential neighborhood as well as larger, non-residential uses along other edges (hotels, offices) and the elevation gain moving into the neighborhood mitigates the visual impact.

Mayor Bellamy opened the public hearing at 7:43 p.m.

Mr. Bryan Moffit, representing the developer, asked for Council's support of the conditional zoning and explained that they have cited the residential building at the end of Dodge Street as far as possible so it was not directly across from any of the houses along Warren Street.

Mayor Bellamy closed the public hearing at 7:43 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hunt found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4195 to conditionally zone the project identified as Biltmore Hill Project, located at 63 Brook Street from RS-8 Residential Single-Family High Density District and Community Business II District to Community Business II District/Conditional Zoning for the development of a 24,958 square foot mixed use building and a 7,707 square foot seven unit multi-family building, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) Any deviation to building design, construction materials and orientation on site from the conceptual site plan and building elevations presented with this application can only be through requirements by the Historic Resources Commission's review (based on Biltmore Village Design Guidelines). Any other deviation from these plans may result in reconsideration of the project by the reviewing boards;

(6) Compliance with the Biltmore Village Design Standards for the portion of the property within the overlay is required prior to issuance of a zoning permit; (7) Review and approval of the off-site parking lot (2 Fairview Road) is required prior to final zoning approval (and is required prior to CO); and (8) The building along Warren Avenue is residential only and may not be used for any commercial purposes. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 28 - PAGE 236**

**C. PUBLIC HEARING TO CONSIDER REZONING PROPERTY ON THOMPSON STREET FROM RIVER DISTRICT TO URBAN PLACE DISTRICT**

**ORDINANCE NO. 4196 - PUBLIC HEARING TO REZONE PROPERTY ON THOMPSON STREET FROM RIVER DISTRICT TO URBAN PLACE DISTRICT**

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone property on Thompson Street from River District to Urban Place District. This public hearing was advertised on May 17 and 24, 2013.

Mr. Esselstyn said that the subject area is bounded and bisected by noteworthy pathways: the north and south property lines abut the Swannanoa River and the Norfolk Southern Railroad Lines, respectively; Stoner Road abuts the western edge, intersecting Thompson Street, which divides the property. The land between Thompson Street and the river lacks significant development potential, as it is entirely in the floodway, hence the analysis will focus on the area south of Thompson Street.

Despite the higher ground south of Thompson Street, the vast majority of the subject parcel still is identified on the current FEMA flood maps as 100-year floodplain. The applicant has modified the property grades subsequent to the capture of the data on which the current maps are based, but has not yet requested flood map amendments, preferring to wait until the outcome of the rezoning petition and final land configuration have been determined.

The applicant's request to rezone the property from River District to Urban Place District stems from an interest in a zoning classification that would allow higher residential density (64 units per acre for UP, compared to 16 for River), as well as the other higher-intensity development options that the latter district provides.

The Urban Place District is designed to encourage higher density mixed-use development that is pedestrian friendly and includes special building design considerations similar to other mixed-use districts. The district is expected to foster development and redevelopment of areas with sufficient infrastructure in place to support the uses. Urban Place is expected to be applied to areas faced with blight and neglect and for areas that may have special environmental considerations. The range of permitted uses is broad enough to support compatible infill redevelopment.

The River District is developed to encourage redevelopment of the river areas in a manner that complements the natural environment of the river. The River District is unique in that it allows any use that is not prohibited in the list of uses. The residential density of the River District is relatively low for the nature of the district and the fact that most housing will be multi-family in style.

In early 2007, more than a dozen properties were rezoned from either River or CI (Commercial Industrial) to Urban Place, as an effort to begin implementing the Dykeman Plan by providing the appropriate zoning for the area. These rezoning processes were also accompanied by an ordinance amendment to the Urban Place District section of the ordinance to add environmental standards. About half of the properties involved in the rezoning neighbored the

French Broad, but a similar number of the properties were along the Swannanoa, five of them in the vicinity of the subject parcel. The subject property was originally included in one of these rezoning processes, but then withdrawn at the applicant's request.

Three of the parcels rezoned from River to Urban Place were recently rezoned back to River again for the New Belgium project. In that specific case, the reversion was for a specific project (now underway), but there are multiple examples of other speculative zoning requests in recent years elsewhere in Asheville that have had to be later "undone" because they never attracted a buyer/developer. (It should be noted that the successfully completed Mica Village project is on one of the nearby parcels rezoned to Urban Place in 2007.)

In 2007, when the subject parcel was included in the proposed rezoning, the staff recommendation was for approval, and staff maintains the supportive stance today. The proposal is consistent with adopted plans, and the Urban Place district is compatible with surrounding uses. Some capacity for industrial and other high-impact uses would be lost, but staff sees that as a tolerable downside, given the upside of potential for sought-after higher density development of an urban nature.

At their May 1, 2013, meeting the Planning and Zoning Commission voted unanimously to recommend approval of the proposed rezoning.

Stephanie Monson Dahl, the City's Riverfront Redevelopment Coordinator, has also reviewed the analysis and raised no objection.

As of this writing, staff has received no communications from the public regarding the petition in question.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Is suitable for the subject area and consistent with other adjacent and nearby zoning.
- Supports the goals of the City Development Plan 2025 related to river-area land use, smart growth concerns, transportation opportunities, potential for economic growth and greenway and environmental features.
- Consistent with the Wilma Dykeman Riverway Master Plan.
- Could encourage private investment and redevelopment in the subject area.

Con:

- High-density development in the flood hazard area, given the undetermined status of future flood maps for this property, could prove to be a challenging proposition.

Staff feels that the proposed zoning change is in keeping with other comparable rezonings in the riverfront areas in the recent past, and is also consistent with current City goals and interests in these areas. Hence, staff recommends approval.

Mayor Bellamy opened the public hearing at 7:47 p.m.

Ms. Lisa Stevens, representing the applicant Mr. George Morosani, explained that they have modified the property grades and have performed all the background work to determine the exact amount of grading that would be necessary to bring the property out of the floodway area. After the outcome of their rezoning request and final land configuration, they will be requesting a flood map revision from FEMA.

Mayor Bellamy closed the public hearing at 7:48 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Smith found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4196. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 240**

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 13-114 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Asheville-Buncombe Historic Resources Commission.

Ms. Ashley Gaylord has resigned from the Commission, thus leaving an unexpired term until July 1, 2013; Ms. Hillary Cole has resigned from the Commission, effective July 1, 2013, thus leaving an unexpired term until July 1, 2014; and the term of Mr. David Nutter expires on July 1, 2013.

The following individuals have applied for the vacancies: Grant Millin, Ronald E. Burgin, Aixa Wilson, David Carpenter, Sue Russell, William S. Eakins and Woody Farmer.

On May 14, 2013, City Council instructed the City Clerk to arrange interviews for Sue Russell, William Eakins and Woody Farmer. Also on May 14, it was the consensus of Council to reappoint Mr. Nutter to serve an additional three-year term.

After Council spoke highly of the candidates, Sue Russell received 6 votes, William Eakins received 1 vote and Woody Farmer received 5 votes (Mayor Bellamy was not in the room). Therefore, (1) Woody Farmer was appointed as a member of the Asheville-Buncombe Historic Resources Commission, to serve the unexpired term of Ms. Gaylord, term to expire July 1, 2013, and then a full three-year term, term to expire July 1, 2016; (2) Sue Russell was appointed as a member of the Asheville-Buncombe Historic Resources Commission, to serve the unexpired term of Ms. Cole, term to begin July 1, 2013, and term to expire July 1, 2014; and (3) David Nutter was reappointed to serve an additional three-year term, term to expire July 1, 2016. All appointments are until their successors have been appointed.

**RESOLUTION BOOK NO. 35 – PAGE 313**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Timothy Sadler spoke to Council about the need for a formal request to the Asheville Police Department for a dollar amount for marijuana enforcement, and also the need for transit service on Sundays.

City Manager Jackson responded to Council regarding making our transit system more viable.

**VIII. ADJOURNMENT:**

Vice-Mayor Manheimer adjourned the meeting at 8:00 p.m.

Magdalen Bowerson
CITY CLERK

MAYOR

Tuesday – June 11, 2013- 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith (excused at 8:00 p.m.); City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Esther E. Manheimer

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Davis gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING JUNE 8-22, 2013, AS "POLLINATION CELEBRATION DAYS" IN THE CITY OF ASHEVILLE**

Councilman Smith read the proclamation proclaiming June 8-22, 2013, as "Pollination Celebration Days" in the City of Asheville. He presented the proclamation to Ms. Phyllis Stiles, Director of Bee City USA, who briefed City Council on some activities taking place during the week. She then was pleased to show the first new City road sign - Bee City USA.

**B. PROCLAMATION PROCLAIMING JUNE 16-22, 2013, AS "AUTISM PRIDE WEEK" IN THE CITY OF ASHEVILLE**

Councilman Davis read the proclamation proclaiming June 16-22, 2013, as "Autism Pride Week" in the City of Asheville. He presented the proclamation to Ms. Julia Bramsen, organizer of Autism Pride Week, who briefed City Council on some activities taking place during the week.

**II. CONSENT AGENDA:**

At the request of City staff, Consent Agenda Item "C" was removed from consideration.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 28, 2013**

**B. RESOLUTION NO. 13-115 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY 2.8 ACRES OF REAL PROPERTY LOCATED OFF WEST CHAPEL ROAD TO BUNCOMBE COUNTY**

Summary: The consideration of a resolution authorizing the Mayor to convey 2.8 acres of real property located off West Chapel Road, portion of PIN 9657-51-1778-00000, to Buncombe County.

The City of Asheville owns approximately 37 acres of real property located at 70 West Chapel Road, utilized as the Ray Kisiah Park. Of the 37 acres, approximately 9.5 acres have been developed into baseball fields and parking. The balance of the acreage is held as wooded open space. The Park borders existing industry to the West, single family residential properties to the East and the Extraterritorial Jurisdiction (ETJ) to the North and South.

At this time, Buncombe County has requested that the City transfer a 2.8 acre portion of the unused area of Ray Kisiah Park to support local economic development. The area of interest is roughly 200 yards from the edge of the closest baseball field, and this transfer does not impact the use of the fields. From time to time, the City and County have utilized land transfers to support economic development. Earlier this year, Buncombe County donated a 3.33 acre property at the intersection of Emma Road and Craven Street to the City of Asheville in order to support the Craven Street Transportation Improvement Project.

The Parks, Recreation and Cultural Arts Department has verified that this 2.8 acre parcel does not lie within an existing or proposed greenway trail according to the Greenway Master Plan and therefore is not an advantageous property to be held for use by the City of Asheville. Nor does this transfer impact future park uses associated with recreation programming at Ray Kisiah Park.

This action complies with the City Council Strategic Operating Plan by supporting Fiscal Responsibility, through transfer of surplus real property for supporting economic development.

Pro:

- The transfer of 2.8 acres of property will support economic development.

Con:

- There is no negative impact.

This is a no cost transfer of land to Buncombe County, therefore no revenue will be generated off of this transfer. The City will have minimal legal and closing costs associated with this transfer; those expenses will be absorbed into the existing operating budget.

Economic Development staff recommends City Council adopt the resolution to convey 2.8 acres of real property off West Chapel Road to Buncombe County.

**RESOLUTION BOOK NO. 35 - PAGE 314**

**C. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A UNIT PRICE CONTRACT WITH LAND OF THE SUN INC. D/B/A FLETCHER GRADING CONTRACTORS FOR THE OVERLOOK ROAD SIDEWALK CONSTRUCTION PROJECT**

**BUDGET AMENDMENT FOR THE OVERLOOK ROAD SIDEWALK CONSTRUCTION PROJECT**

These item were removed from consideration.

**D. RESOLUTION NO. 13-117 - RESOLUTION AUTHORIZING REQUEST TO FEDERAL AVIATION ADMINISTRATION FOR APPROVAL OF TRANSFER OF WNC AGRICULTURAL CENTER PROPERTY TO THE STATE OF NORTH CAROLINA**

Summary: The consideration of a resolution authorizing a request to the Federal Aviation Administration (FAA) to approve the transfer of the WNC Agricultural Center property to the State of North Carolina.

The WNC Agricultural Center is located on 50 acres of property situated to the south and east of the Asheville Airport, and cross Airport Road (NC Highway 280) from the airport terminal

and runway facilities. The property is owned by the City of Asheville, and was acquired as part of the original purchase of property for the airport back in 1958. The property was acquired with FAA financial assistance

In 1985, the City entered into a lease for this property with the State. With renewal options, the term of the Lease is 100 years. The State has used the property for the WNC Agricultural Center since then, and has continued to expand its facilities.

In 2012, the NC General Assembly enacted, N.C. Sess. Law 2012-121, which provides for the transfer of the WNC Agricultural Center property to the State by "warranty or quitclaim deed." Because the property was acquired with FAA funds, however, certain conditions must be met, and the FAA must approve the transfer. Those conditions include a determination that the property is no longer needed for aeronautical purposes, reimbursement to the FAA of its *pro rata* share of the fair market value of the property, and certain restrictions on the use of the property.

In order to get the FAA approval process started, the "sponsor" of the Airport must make the request. The City and Buncombe County are the recognized cosponsors of the Airport. The County has already agreed to support the request. The resolution would authorize the request to be made on behalf of the City.

Once the terms of the conveyance are agreed to and approved by the FAA, the process of completing the transfer is relatively straightforward.

This transfer will be consistent with the goal of promoting the partnerships with key organizations to support economic development.

Pros:

- Complete the process initiated years ago.
- State gains ownership of its facilities.

Con:

- Property will no longer be available for airport use.

Adoption of the resolution is recommended.

**RESOLUTION BOOK NO. 35 - PAGE 316**

**E. RESOLUTION NO. 13-118 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 5 WALNUT ANNIVERSARY BLOCK PARTY ON JUNE 11, 2013**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 5 Walnut Anniversary Block Party on June 11, 2013.

- Green Opportunities has requested through the City of Asheville Development Services Department that City Council permit them to serve beer and/or unfortified wine at the 5 Walnut Anniversary Block Party and allow for consumption at this event.

The 5 Walnut Anniversary Block Party will be held on Wednesday, June 19, 2013, from 4:00 p.m. – 11:00 p.m. within the boundaries of Walnut Street between the intersections of Broadway and Carolina Lane, as referenced on the accompanying site map.

City staff recommends City Council adopt the resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 5 Walnut Anniversary Block Party.

**RESOLUTION BOOK NO. 35 - PAGE 317**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Bothwell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Hunt and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. HUB COMMUNITY ECONOMIC DEVELOPMENT ALLIANCE UPDATE

Mr. David Brown, Chair of the HUB Community Economic Development Alliance, briefed Council on their activities of the past year and goals for the upcoming year.

On behalf of City Council, Mayor Bellamy thanked Mr. Brown for his leadership and the entire Board for their dedication.

### B. LEGISLATIVE & UPDATE

Deputy City Manager Jeff Richardson highlighted the following legislative issues of interest: House Bill 488 - Transfer Control of the City of Asheville's Water System to a Regional Entity (temporary restraining order has been extended to August 6, 2013); House Bill 252 - Asheville Transfers; House Bill 418 - Park Authority; House Bill 224 - Asheville Extraterritorial Jurisdiction and Annexation; House Bill 568 - Asheville Deannexation; House Bill 708 - Study Public Enterprise Systems/Use of Funds; House Bill 998 - Tax Simplifications and Reduction Act; House Bill 94/Senate Bill 112 - Amend Environmental Laws 2013; Senate Bill 612 - Regulatory Reform Act of 2013; House Bill 664 - Cell Tower Deployment Act; Senate Bill 677 - Local Government Regulatory Reform; House Bill 937 - Amend Various Firearms Laws; and House Bill 714/Senate Bill 443 - Disposition of Abandoned Firearms.

### C. UNC-ASHEVILLE ECONOMIC IMPACT STUDY

Mr. Greg Carter, Assistant Vice Chancellor for External Relations at UNC-Asheville, summarized the following finding highlights from the Economic Impact of the University of North Carolina at Asheville: (1) economic activity generated by UNC-Asheville supports 2,592 local jobs, adds $105.5 Million in local economy, and raises total economic output in the Asheville area by $268 Million; (2) for every dollar the state of North Carolina appropriates to UNC-Asheville (a) income increases by $2.96 in the Asheville area; and (b) total economic output increases by $7.57 in the Asheville area; (3) economic activity generated by UNC-Asheville increases annual tax revenues by more than $35.8 Million; $14.8 Million in state and local taxes, and $21 Million in federal taxes; (4) on-campus employment accounts for less than one-third of the local jobs UNC-Asheville supports - more than 1,800 local supported jobs are off-campus in industries well-outside of education. For example, UNC-Asheville supports 442 jobs in Retail Trade, 266 jobs in Real Estate, 246 jobs in Accommodation & Food Services and 243 jobs in Health Care & Social Assistance; (5) UNC-Asheville students spend over $30 Million annually in the local economy - student spending annually supports 506 local jobs, raises economic output by $36.3 Million, and increases tax revenues by $6.9 Million; (6) graduates of UNC-Asheville living in the Asheville area increase local earnings by $85 Million on an account of having attained a Bachelor's or

Graduate's degree - the graduate education premium supports 588 local jobs by means of adding spending, raises economic output by $64 Million, and increases tax revenues by $8.6 Million; (7) UNC-Asheville attracts new residents to the Asheville area. Survey results from Osher Lifelong Learning Institute attribute the annual relocation of 100 new households, partially on account of the Institute's activities and introduction to the community - added local spending from new 100 households supports 69 local jobs, raises economic output by $7.6 Million, and increases tax revenues by $1 Million; and (8) visitors who traveled form outside the Asheville area to attend or participate in a UNC-Asheville event spend an estimated $4.5 Million annually in the local economy - the visitor spending annually supports 95 local jobs, raises local economic output by $6.4 Million, and increases tax revenues by $1.1 Million.

On behalf of City Council, Mayor Bellamy thanked Mr. Carter for his striking highlights and was pleased with the partnership with UNC-Asheville.

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING TO CONSIDER THE FISCAL YEAR 2013-14 ANNUAL OPERATING BUDGET

Budget Manager Tony McDowell said that this is the public hearing is to receive public input on the proposed Fiscal Year 2013-14 Annual Operating Budget. This public hearing was advertised on May 31 and June 7, 2013.

The Fiscal 2013/2014 Proposed Annual Operating Budget was presented to City Council on May 28, 2013. The Fiscal Year 2013/2014 Proposed Budget is balanced with a revenue-neutral Ad Valorem tax rate of $0.43 per $100 of assessed value. All essential City services are continued in the Proposed Budget. A copy of the Proposed Budget is available for public inspection in the City Clerk's office. The Proposed Budget is also available for viewing on the City's website (www.ashevillenc.gov).

In addition to this Public Hearing, Council also received public input during this year's budget process at the Town Hall Budget Meeting which was held on April 3, 2013, and at the Community Budget Workshop which was held on April 18, 2013.

In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Proposed Budget along with a notice of the Public Hearing was published on May 31 and June 7, 2013. Adoption of the Fiscal 2013/2014 Budget Ordinance is scheduled for June 25, 2013, at the regularly scheduled City Council meeting. The Proposed Budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption, with the only exception being the Ad Valorem Tax rate, which cannot be changed once the Budget is adopted.

Staff recommends City Council conduct the public hearing on the City of Asheville Fiscal Year 2013/2014 Proposed Annual Operating Budget and include public input in its consideration of the Budget.

Mr. McDowell then reviewed the proposed Fiscal Year 2014 budget assumptions regarding the Culture & Recreation Authority (CRA). If there is no CRA for Asheville, policy decisions include (1) Fiscal Year 2014 proposed operating budget (a) $1.5 Million budget gap (i) 1-cent tax rate increase and (ii) service reductions; and (2) Fiscal Year 2014-2018 Capital Improvement Program (a) implementation of community & economic development capital improvement plan would require 2-cent tax rate increase in Fiscal Year 2015; and (b) enhancing pay-go capital improvement plan would require a 1-cent tax increase.

Mayor Bellamy opened the public hearing at 5:38 p.m.

The following individuals commented about the City's proposed budget, with some comments being, but are not limited to: budget is not revenue neutral; opposed to $2 Million for Asheville Art Museum; new taxes seem to go to downtown projects; use the allocation proposed for the Asheville Art Museum and downtown parking decks for street & sidewalk infrastructure; support for location, staff and resources to support the Memorial Day event; support transit system with its current routes; support for Affordable Housing Trust Fund; work with non-profits in future years to meet the needs of children and families; too much money is spent on traffic calming; if the City funds non-profits then Planned Parenthood should be funded; and the proposed budget stretches the limits of residents and we need to re-frame thinking into sustainability:

Mr. John Miall
Mr. Saul Chase
Mr. Timothy Sadler
Mr. Ron Kennedy
Mr. Greg Borom
Mr. Alan Ditmore
Dr. Milton Byrd

At 5:57 p.m., Mayor Bellamy closed the public hearing.

There was considerable discussion by Council regarding the budget and the Plan B Council might need to be prepared for if the CRA doesn't happen. Some Council members felt it was unlikely that the CRA impact on our budget will happen, and since the City Manager's budget is built around that impact, that Council should direct the City Manager to prepare a different alternative (Option 2 - no CRA impact in Fiscal Year 2014 budget with a penny for operating (or service reductions) and 3 pennies for the Capital Improvement Plan).

In response to Councilman Bothwell, City Attorney Oast said that he did not believe that Council could adopt two different budgets, depending on whether the CRA would be enacted or not. He said that Council may know more about the CRA by June 25, at which time Council will need to adopt the budget and set the tax rate.

In response to Councilman Smith, Mr. McDowell said that the last property tax increase was in the late 1990's - 4-cent increase for street, sidewalk and park improvements and it also established the Affordable Housing Trust Fund.

Mayor Bellamy strongly supported the CRA because the City residents are paying for facilities like the WNC Nature Center, John B. Lewis Soccer Field and McCormick Field, but they are truly regional in nature. It's not fair to our residents to shoulder the entire burden.

At Mayor Bellamy's request, City staff addressed the items brought up during public comment.

When Mayor Bellamy urged Council to include funds for a Memorial Day event, City Manager Jackson said that a Memorial Day event can still happen without festival event staff.

Mayor Bellamy said that adoption of the Fiscal Year 2013-14 Annual Operating Budget would occur on June 25, 2013.

**B. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING AN UNOPENED RIGHT-OF-WAY BETWEEN TARPON AND CRAGGY AVENUES**

Assistant Public Works Director David Foster said that this is the consideration of a resolution to permanently close an unopened right-of-way between Tarpon and Craggy Avenues. This public hearing was advertised on May 17, 24, 31 and June 7, 2013.

N.C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owner's (Bob and Caryn Hanna, Jody Guokas, Isaac Savage, Jim and Nancy Herrig, James and Martha Roberson, and Michael Kohnle and Deidre Duffy) have requested the City of Asheville to permanently close an unopened Right-of-way between Tarpon and Craggy Avenues.

The Planning Department recommends that the owner(s) offer some type of future pedestrian connection, or "shared use agreement" for future pedestrian amenities.

The Metropolitan Sewer District has identified a sewer line crossing mid-way in the right-of-way. An approved easement would need to be included in the revised property configuration.

The Greenway Commission reviewed this closure request at their meeting on May 9, 2013, and concurred with the request based on the inclusion of the future pedestrian connection provision.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other properties
- The closure would allow for more efficient use of the existing adjacent properties.

Con:

- None

City staff recommends City Council adopt the resolution to permanently close the unopened right-of-way between Tarpon and Craggy Avenues.

In Mayor Bellamy's absence from the meeting room, Councilman Davis opened the public hearing at 6:47 p.m.

Ms. Caryn Hanna, property owner, urged Council to permanently close the wooded area, noting that all the adjoining property owners supported the closing.

In Mayor Bellamy's absence from the meeting room, Councilman Davis closed the public hearing at 6:49 p.m.

When Councilman Hunt asked if the property owners are amenable to placing some type of future pedestrian connection, or "shared use agreement" for future pedestrian amenities on the right-of-way, Ms. Hanna felt she should contact the other property owners as she was the only one present at the meeting

In response to Councilman Davis, City Attorney Oast said that the statute authorizes Council to reserve an easement for utility purposes only. It does not authorize Council to address an easement for pedestrian access.

Councilman Smith moved to continue this matter until June 25, 2013, in order to allow Ms. Hanna to contact her neighbors to see if they are willing to place an easement on the right-of-way for pedestrian access. This motion was seconded by Councilman Hunt and carried unanimously.

C. **PUBLIC HEARING TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH RESPECT TO AN ECONOMIC DEVELOPMENT PROJECT KNOWN AS PROJECT X**

**RESOLUTION NO. 13-120 - RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH RESPECT TO AN ECONOMIC DEVELOPMENT PROJECT KNOWN AS PROJECT X**

Economic Development Director Sam Powers said that this is the consideration of a resolution approving a $1,568,000 performance based economic development incentive grant for a company known herein as Project X. This public hearing was advertised on May 31, 2013.

This is the consideration for a performance-based economic development incentive grant under the City of Asheville Economic Development Incentive policy. Project X proposes to make investments to make improvements to facilities, and make expenditures to acquire and install machinery, equipment and other property which may increase the tax value as determined by the Buncombe County Tax Department, in the amount of $126,620,000. These significant investments, which will be at facilities located in the City of Asheville, will also allow Project X to create and maintain in the City for a ten (10) year period, from and after December 31, 2017, positions for at least 52 new full-time employees who will be employed in the City of Asheville and to retain all current full-time employees it has employed in the City of Asheville. The average median wage of the current full-time employees in the company is $57,000. The median average wage to be paid to the employees in the new full-time jobs would be approximately $40,000 per year, which is higher than the County's median average wage of $36,296. Further, the annual total labor income impact for Asheville and Buncombe County due to these jobs is more than $34,000,000 per year.

The City proposes to appropriate and spend from the City's general fund, pursuant to NCGS § 158-7.1, amounts to make certain cash grants not to exceed $1,568,000 over a period of seven years and distributed after job creation and investment is achieved, or mutually agreed performance benchmarks are established. The purpose of these grants would be to induce Project X to make these investments in its facilities in the City of Asheville. The City of Asheville and Project X shall enter into an economic development agreement that will clearly state their respective responsibilities under the agreement, including provisions regarding remedies for a breach requiring the recapture of sums appropriated or expended by the City upon the occurrence of events specified in the agreement. Events that would require the City to recapture funds would include the creation of fewer jobs than specified in the agreement, a lower capital investment than specified in the agreement, and failing to maintain operations at a specified level for a period of time specified in the agreement.

Project X's operations in the City of Asheville at the levels of employment indicated would further the economic interests of the City in numerous ways, including through the following specific benefits: (a) by creating a substantial number of new full time jobs with an average wage greater than the median average wage in the County; (b) by enhancing the City's property tax base and increasing the City's property tax revenues; and (c) by locating in the City a manufacturing facility. In addition to holding the public hearing, the Council intends to take action during the meeting in connection with these matters, including authorizing final negotiation of the terms and conditions of an economic development agreement with Project X, and may approve the making of cash grants to Project X.

The economic development incentive grant ties into City Council's Strategic Operating Plan as it addresses multiple focus areas of the Plan.

Pros:

- Performance driven grant that is distributed after job and investment is achieved;

- Supports job creation and capital investment in manufacturing in Asheville;
- Supports retention and expansion of existing industry in the City;
- Supports development of an identified economic cluster in the City; and,
- Supports regional and state cooperation in the project.

Con:

- Grant is formulated based on use of a portion of new incremental tax revenue for a seven year period.

The City of Asheville proposes to offer Project X a performance-based grant not to exceed $1,568,000. The performance-based grant will be paid over a 7 year period and distributed after job creation and investment is achieved or mutually agreed performance bench marks are established, taxes are paid and verified, and the company requests payment. The amount of the annual payment will take into consideration the estimated annual ad valorem tax revenue attributable to the capital improvements, and any annual payment will not exceed $224,000. It is anticipated that the first annual payment will occur in FY 2014-15.

The project has an overall positive fiscal impact on tax revenues received by the city. Initially (during the grant period), the City will receive approximately 50% of the new incremental property tax revenues from the project. After 7 years, the City will henceforth receive 100% capture of new city taxes.

City staff recommends Council approve the resolution authorizing an economic development incentive grant for Project X not to exceed $1,568,000.

Mr. Powers responded to Councilman Smith when he asked for clarification of medium and average wages.

Councilman Smith said that during Council's retreat, he asked that Council re-examine our economic development policies because we haven't done a great job to have meaningful incentives for our medium and small home grown businesses.

In response to Councilman Smith, Mr. Powers explained the interdepartmental team and their incentive update timeline which the City Council Planning & Economic Development (PED) Committee requested be organized. He said they will be reporting back regularly to the PED Committee

In Mayor Bellamy's absence from the meeting room, Councilman Davis opened the public hearing at 7:10 p.m.

When Ms. Gwen Wisler asked if the City follows up with companies to see if their employees are City or Buncombe County residents, Mr. Powers said that in the past we have not made it a requirement that jobs created are either for Asheville or Buncombe County residents, but we know from past work with companies that appropriately 65-70 people live in Buncombe County and 35% live within Asheville.

Mr. Jerry Rice felt the City should not be providing incentives for companies that are so large they could buy out the entire City and County. He felt that if the company fails, the taxpayers will be the ones who will be penalized. He felt that the company should be upfront with who they are so citizens can be well informed.

Mr. Alan Ditmore spoke in opposition of Project X if it is an aviation industry, as they are not making the world a better place.

Dr. Milton Byrd felt that the economic incentives are not benefiting the people of Asheville. The incentive policy needs to be re-visited.

Ms. Leslee Kulba urged Council not to subsidize large corporations.

At 7:23 p.m., Mayor Bellamy closed the public hearing.

Councilman Pelly felt that even though this is not the direction he felt we need to go, he reminded the public that we are not writing checks. The performance-based grant will be paid over a 7 year period and distributed after job creation and investment is achieved, taxes are paid and verified, and the company requests payment. During that time we are collecting all property and other taxes associated with the company.

Councilman Bothwell is troubled by the secrecy of this project. He felt that if the company was transparent from the beginning, he might feel differently about supporting the incentives.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 13-120. This motion was seconded by Councilman Hunt and carried on a 5-1 vote, with Councilman Bothwell voting "no".

**RESOLUTION BOOK NO. 35– PAGE 321**

**Closed Session**

At 7:32 p.m., Councilman Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: State of North Carolina, City of Asheville; and Metropolitan Sewerage District. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); (2) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11 (a) (6); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory is contained in G.S. 143-318 (a) (1); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 8:11 p.m., Councilman Bothwell moved to recess the closed motion to return to the formal meeting, noting that the closed session would continue at the end of the formal meeting. This motion was seconded by Councilman Davis and carried unanimously.

**D. PUBLIC HEARING TO CONSIDER REZONING A PORTION OF PROPERTY OFF SWEETEN CREEK INDUSTRIAL PARK FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INDUSTRIAL DISTRICT**

**ORDINANCE NO. 4197 - ORDINANCE REZONING A PORTION OF PROPERTY LOCATED OFF SWEETEN CREEK INDUSTRIAL PARK FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INDUSTRIAL DISTRICT**

Councilman Davis moved to excuse Councilman Smith from the remainder of the meeting. This motion was seconded by Councilman Pelly and carried unanimously.

Planning & Development Director Judy Daniel said that this is the consideration of an ordinance to rezone a portion of property located off Sweeten Creek Industrial Park from RS-8 Residential Single Family High Density District to Industrial District. This public hearing was advertised on May 31 and June 7, 2013.

She said that the subject area for this rezoning petition is about 7.5% of the entire parcel as shown in the Buncombe County Land Records. The parcel, owned by the City of Asheville, is on western edge of the Ray L. Kisiah Park, but the actively used amenities of the park consist only of the ballfields a significant distance from the site on the southern half of the parcel. The northern half is undeveloped woodland which shows little evidence of public use. There appear to be no trails in the area save a partially cleared path beneath power lines near the southern tip of the subject area.

The actual subject area for the rezoning is a triangle approximately 2.8 acres in size. Along the longest edge of the triangle, to the west, it is bordered by a business in the Sweeten Creek Industrial Park. The other two sides of the triangle abut the City-owned land described above, with the northern tip of the triangle adjacent to the backyards of two residential properties. This rezoning is being initiated by the City for future economic development purposes. It would make the subject area's zoning consistent with the zoning to the west (Industrial) rather than that to the east (RS8). The proposed rezoning would result in a split-zoned property for the short term, but the City has stated an intention to divide off the industrially-zoned portion so that the property lines would follow the zoning district boundaries.

The northern half of the City-owned parcel currently provides a buffer between the industrial park and the residential neighborhoods to the east, but even if the subject area were to be developed with any allowed use in the future, the subject area would be more than 250 feet from the Ashwood Drive subdivision. Furthermore, a 30-foot buffer would be required along the edge of the development bordering residential zoning, totaling two-thirds of an acre, or almost a quarter of the subject property.

"Realizing the importance of industrial uses to the economy of the City of Asheville," the UDO states, "it shall be the purpose of the Industrial District to reserve land for existing and future industrial activities and for land uses that support industrial activities. Development standards are established to ensure that land uses located outside the Industrial District are not adversely affected by the negative impacts of industrial uses. Industrial Districts shall be located to capitalize on existing infrastructure where possible, such as transportation facilities and utilities."

The intent of the RS-8 Residential Single-Family High Density District is "to establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development and to stabilize and protect the district's residential character in areas of existing high density single-family development while promoting a suitable environment for single-family living. Non-single-family development normally required to provide the basic elements of a balanced and attractive residential area is also permitted."

The City of Asheville Parks, Recreation, Cultural Arts and Greenways Master Plan from 2009 does not include any specific recommendations for changes to Kisiah Park; and more than 20 acres of unimproved parkland would remain available for future additions of facilities or programming. Staff feels the isolated position of the subject area, and the consistency of the proposed zoning with the area to the west, as well as the compliance with the comprehensive plan's goals regarding industrial land, are all factors in the petition's favor.

At their June 5th, 2013 meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning.

As of this writing, staff has received no communications from the public regarding the petition in question.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The change is suitable for the subject area and consistent with other adjacent and nearby land uses, taking into account required buffering for any future development.
- It complies with important goals of the comprehensive plan.
- It would increase capacity for economic development in the City.

Cons:

- Small loss of undeveloped land on the outer boundary of a park.
- Would create a (likely to be temporary) split-zoning situation.

In recent years, there have been numerous rezoning petitions resulting in the loss of industrially zoned land in the City's jurisdiction. This petition stands to add industrial capacity, and for the reasons stated above, staff recommends approval.

Mayor Bellamy opened the public hearing at 8:14 p.m. and when no one spoke, she closed the public hearing at 8:14 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hunt found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4197. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 243**

**V. UNFINISHED BUSINESS:**

**A. ORDINANCE NO. 4198 - ORDINANCE REPEALING THE GREENWAY COMMISSION**

**ORDINANCE NO. 4199 - ORDINANCE REPEALING THE TRANSIT COMMISSION**

**RESOLUTION NO. 13-121 - RESOLUTION APPOINTING MEMBERS TO THE MULTIMODAL TRANSPORTATION COMMISSION**

Executive Director of Public Works and Multimodal Transportation Cathy Ball said that this is the consideration of ordinances repealing the Greenway Commission and the Transit Commission.

At the February 2013 Boards and Commissions meeting, staff presented a model for combining/augmenting various transportation and neighborhood related boards by forming a Multimodal Transportation Commission.

Staff and/or Council members have met with the various Boards and Commissions and have tweaked the initial recommendations. The total membership on the board is proposed to be nine voting and three non-voting members.

On May 14, 2013, City Council adopted an ordinance establishing the Multimodal Transportation Commission. The new Multimodal Transportation Commission includes members

from the Transit Commission, the Greenway Commission, and the Bicycle and Pedestrian Task Force. In the future, the Transit Commission and the Greenway Commission will serve as sub-committees to the Multimodal Transportation Commission.

This action will repeal the existing ordinances that created both the Transit Commission and the Greenway Commission.

This action complies with one of Council's Strategic Goals by supporting multimodal transportation planning.

Staff recommends that City Council repeal previous ordinances establishing the Transit and Greenway Commissions.

In response to Mr. Alan Ditmore about specific groups being represented on our boards and commissions, City Manager Jackson explained that the way to increase representation is to encourage those people to apply for boards so they can become eligible for future appointments.

In response to Dr. Milton Byrd, Mayor Bellamy explained that the Multimodal Transportation Commission is a Council-appointed Commission.

Councilman Bothwell moved for the adoption of Ordinance No. 4198. This motion was seconded by Councilman Hunt and carried unanimously.

**ORDINANCE BOOK NO. 28 - PAGE 246**

Councilman Bothwell moved for the adoption of Ordinance No. 4198. This motion was seconded by Councilman Hunt and carried unanimously.

**ORDINANCE BOOK NO. 28 - PAGE 247**

Mayor Bellamy read the following names of the individuals appointed to the Multimodal Transportation Commission: Itiyopia Ewart, Julie Mayfield and Bruce Emory (Transit Sub-Commission representatives); Marcia Bromberg, Mary Weber and Jim Grode (Greenway Sub-Commission representatives); Till Dhose, Don Kostelec and Terri March (Bike and Pedestrian Task Force representatives); Robert Roepnack (Neighborhood Advisory Committee non-voting ex-officio member); Kristy Carter (Planning & Zoning Commission non-voting ex-officio member); and Lael Gray (Sustainable Advisory Committee on Energy & the Environment non-voting ex-officio member).

Councilman Bothwell moved for the adoption of Resolution No. 13-121. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 35 - PAGE 322**

**B. RESOLUTION NO. 13-122 - RESOLUTION AUTHORIZING THE CITY MANAGER EXECUTE A CONTRACT WITH CODE STUDIO FOR PROFESSIONAL PLANNING SERVICES TO CREATE A FORM-BASED CODE FOR THE HAYWOOD ROAD CORRIDOR IN WEST ASHEVILLE**

Planning & Development Director Judy Daniel said that this is the consideration of a resolution authorizing the City Manager to execute a contract with Code Studio for professional planning services to create a form-based code for the Haywood Road Corridor in west Asheville.

The City Council has long supported planning efforts that work toward the goals of the 2025 Comprehensive Plan, including small area plans. In recent years the Council has come to

support the gradual evolution toward regulatory code that is based in creating great places through defining the form of the built environment, rather than the regulation of uses.

In support of this policy, City Council's adopted 2012-13 Annual Operating Budget included funding in the amount of $100,000 for the creation of a "demonstration" form-based code project. Because of budget constraints the Council did not give final authorization for the project until early in 2013. The Council then considered two locations for the project and ultimately selected the Haywood Road corridor in West Asheville for this project.

The Planning and Development Department issued a Request for Proposals for Form-Based Code planning services in April. A selection committee comprised of planning staff, Planning Commissioners, and West Asheville residents evaluated the responses. Each firm was scored on a list of baseline criteria and the panel came to a consensus that Code Studio of Austin, Texas, was the best match for the City for this project.

Code Studio is a planning and design firm from Texas with national experience and expertise in this emerging field of planning. They are partnering with other firms and individuals with expertise in transportation, economic analysis, and project management. The project is to be completed before the end of 2013.

Therefore, the Planning Department seeks Council's approval for a contract between the City of Asheville and Code Studio in an amount not to exceed $100,000. Because the funding for this contract was authorized within the adopted budget for 2012-2013 no budget amendment is required.

This action is in support of Goal #2/Objective #1 in the Council's Strategic Operating Plan in the Job Growth and Community Development area which states: Support a strong local economy by continuing to implement sustainable growth and development policies, by promoting sustainable, high-density, infill growth that makes efficient use of existing resources. A sub-objective of that goal is to work toward support for urban scale small area plans.

Pro:

- This contract will equal the approved budget amount of $100,000.

Con:

- None noted.

As noted above, the FY 2012-13 Planning Department budget includes adequate funding for this contract.

City staff recommends that the City Council approve a resolution authorizing the City Manager to execute a contract with Code Studio in the amount of $100,000 for professional planning services.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 13-122. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 324**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 13-123 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH THE ASHEVILLE CITY BOARD OF EDUCATION FOR A PORTION OF CITY-OWNED REAL PROPERTY AT 285 LIVINGSTON STREET**

Parks, Recreation & Cultural Arts Director Roderick Simmons said that this is the consideration of a resolution authorizing the City Manager to execute a Lease Agreement with the Asheville City Board of Education for a portion of city-owned real property at 285 Livingston St., Asheville, N.C., known as the Dr. Wesley Grant Sr., Southside Center (Grant Center).

The Asheville City Schools (ACS) system is beginning the process of constructing two new schools including the new Isaac Dickson Elementary and new Asheville Middle School. ACS has requested the City's assistance by providing a lease of property in order for the school district to provide space for William Randolph School students who are being relocated due to Dickson students moving to the Randolph School campus during the construction period.

The property at 285 Livingston St. is approximately 9.37 acres in total and is improved with the Cultural Arts Phase of the Dr. Wesley Grant Sr, Southside Community Center. ACS desires to locate a modular unit containing 12 mobile classrooms on the Grant Center property for the operation school educational activities. The module unit is approximately 12,000 SF and with walkways, decks and ramps; will encompass approximately 1 acre. The classroom units will include bathrooms for students and staff. Lunch will be served in the modular unit and classrooms will include library space. Additionally, ACS requests to utilize the Grant Center auditorium and classroom space as supplementary space for students if needed; schedule to be mutually determined. The hours of operation are flexible and will be scheduled to minimize disruptions to the programs currently offered at the Grant Center.

Once the lease term has concluded, ACS agrees to remove the improvements and restore the premises to its original condition.

The City's Master Plan for the property includes the future development of specific community amenities, including (1) the Town Branch Greenway, (2) A splash-pad water park feature and playground, (3) a gymnasium and additional community center space. The proposed location of the ACS modular building does not impede the development of the next phase of improvements, specifically the splash pad and Town Branch Greenway.

The proposed lease terms are as follows:

- Lease Term: 2 Years from 7/1/13 to 6/30/15
- Rental Rate and Additional Consideration: $1/Yr. and ACS agrees to use its best efforts to work with the City to identify an appropriate and mutually agreeable location for a future greenway easement area on its Asheville Middle School property in connection with the City's planned Clingman Forest Greenway.
- Tenant responsibilities:
    a. Maintenance of modular unit, cleanliness of lease area
    b. All utilities to be contracted for and paid by the tenant; tenant to use Grant Center water, but have flow meter installed and pay for water use
- Tenant use of parking lot during the day as available for cars and bus drop-off and pick up
- Tenant use of other spaces in Grant Center (i.e. auditorium) as available and mutually determined
- Mutual rights to terminate lease
- Standard provisions of all City leases (e.g. insurance, indemnity, etc.) will also apply

City staff recommends City Council adopt a resolution authorizing the City Manager to execute the lease agreement with the Asheville City Schools on behalf of the City of Asheville.

Ms. Jacquelyn Hallum, Chair of the Asheville City Board of Education, asked for Council's support to move forward with this lease.

Mr. Allen Johnson, Superintendent of City Schools, along with Mr. John Legerton, architect, and Mr. Dewayne Tillman, Assistant Principal of William Randolph Elementary School, reviewed with Council a PowerPoint which explained the move from Randolph School move to the Dr. Wesley Grant Sr. Southside Center; and the Dickson move to the William Randolph School site.

Mayor Bellamy was pleased about the partnership between the City and the City Board of Education. She was glad we can help meet their needs.

Mayor Bellamy asked for a programming update of the Dr. Wesley Grant Sr. Southside Center so people in the community will know they will still have access to the Center.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 13-123. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 35 - PAGE 325**

**B. BOARDS & COMMISSIONS COMMITTEE**

Regarding the Civil Service Board, the following individuals have applied for the vacancies: Carolyn Worthington, Elizabeth Franks and Lynn Moffa. It was the consensus of City Council to instruct the City Clerk to arrange interviews for those that applied.

Regarding the Public Art & Cultural Commission, the following individuals have applied for the vacancy: Charley Akers, Amy Huntsman, Wayne Wheeler, Jared Gold, Bryan Andrews, Victor Palomino and Kara Warren. It was the recommendation of the Public Art & Cultural Commission and the consensus of the Boards & Commissions Committee to re-advertise for the vacancy.

**RESOLUTION NO. 13-116 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS-POLICE ADVISORY COMMITTEE**

Councilman Davis, member of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Citizens-Police Advisory Committee.

Mr. Charlie Hume resigned on January 4, 2013, thus leaving an unexpired term until June 30, 2014.

The following individuals have applied for the vacancy: Karl Katterjohn, Fred Cooke, Scott Steele and Grant Osborne.

It was the consensus of the Boards & Commissions Committee to appoint Grant Osborne.

Councilman Bothwell moved to appoint Grant Osborne to the Citizens-Police Advisory Committee, to serve the unexpired term of Mr. Hume, term to expire June 30, 2014, or until his successor has been appointed. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 315**

**RESOLUTION NO. 13-124 - RESOLUTION APPOINTING A MEMBER TO THE CIVIC CENTER COMMISSION**

Councilman Davis, member of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Civic Center Commission.

The term of Bill Jones expires on June 30, 2013.

The following individuals have applied for the vacancy: Antonio Hinton, Arthur Ollendorff, Elizabeth Franks, Suzanne Rice, Sean McNeal, Steve Lockett, Yvonne Cook-Riley and Nick King.

It was the consensus of the Boards & Commissions Committee to reappoint Mr. Jones.

Councilman Hunt moved to reappoint Bill Jones to serve an additional three-year term, term to expire June 30, 2016, or until his successor has been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 326**

**RESOLUTION NO. 13-119 - RESOLUTION APPOINTING MEMBERS TO THE NEIGHBORHOOD ADVISORY COMMITTEE**

Councilman Davis, member of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Neighborhood Advisory Committee.

Ms. Jean Boyd, representing the 28801 zip code, has resigned from the Committee, thus leaving an unexpired term until July 1, 2015. The following individuals with the 28801 zip code have applied for the vacancy: Grant Osborne, Joseph Fioccola, Elizabeth Frank, Carolyn Worthington and Nick King.

Ms. Peggy Dutton, representing the 28803 or 28704 zip code, has resigned from the Committee, thus leaving an unexpired term until July 1, 2015. The following individuals with the 28803 or 28704 zip code have applied for the vacancy: Spencer Hardaway, Neil Barrett and Amy Evans. On May 14, City Council interviewed Rev. Hardaway, but Ms. Evans did not show up for her interview.

In addition, the terms of DeWayne Barton (28806 or 28728 zip code), Carmen Ramos-Kennedy (at-large) and Alan Escovitz (at large) members terms expire on July 1, 2013. The following individuals have applied for the vacancies: Jessica Byrd and Rich Lee.

Councilman Bothwell moved to (1) reappoint DeWayne Barton (28806 or 28728 zip code), Ms. Carmen Ramos-Kennedy (at-large representative) and Alan Escovitz (at-large representative) to each serve a three-year term respectively, terms to expire July 1, 2016, or until their successors have been appointed; (2) appoint Joseph Fioccola (28801) to serve the unexpired term of Ms. Boyd, term to expire July 1, 2015, or until his successor has been appointed; and (3) appoint Spencer Hardaway (28803 or 28704) to serve the unexpired term of Ms. Dutton, term to expire July 1, 2015, or until his successor has been appointed. This motion was seconded by Councilman Pelly and carried unanimously.

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Timothy Sadler spoke to Council about the need to strive for an exceptional transit system and then riders of choice will come on board.

Dr. Milton Byrd spoke about the importance of public trust.

Mayor Bellamy thanked those who worked on the Memorial Day event.

The City was served with a Complaint on or about May 7, 2013, which is generally described as follows; Lisa J. Richmond (formerly Lisa Roth) vs. City of Asheville, et al. Complaint is for wrongful arrest and prosecution. This matter will be handled by an attorney outside the City Attorney's Office.

**Closed Session Continued**

At 8:53 p.m., Councilman Bothwell moved to go into closed session to continue discussion of the items previously announced. This motion was seconded by Councilman Davis and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 9:18 p.m.

Magdalen Burleson
CITY CLERK

Jan M Bellamy
MAYOR

Tuesday – June 25, 2013- 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Hunt gave the invocation.

**I. PROCLAMATIONS:**

**A. RESOLUTION NO. 13-125 - RESOLUTION OF APPRECIATION TO ROBERT W. OAST JR.**

Resolution No. 13-125 was adopted by acclamation.

Mayor Bellamy spoke kind words of City Attorney's Oast's service to City Council and the citizens of Asheville and presented him with the resolution, his name plate and a City pen.

City Attorney Oast thanked the public and his family for allowing him to serve. He also thanked City staff and City Council for their professionalism and dedication to the citizens of Asheville.

**RESOLUTION BOOK NO. 35 - PAGE 327**

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 11, 2013**

**B. ORDINANCE NO. 4200 - TECHNICAL BUDGET AMENDMENT FOR U.S. CELLULAR CENTER AND GOLF FUND**

Summary: The consideration of (1) a technical budget amendment, in the amount of $170,000, from US Cellular Center operating revenue, to appropriate sufficient budget to cover event settlement expenses previously netted against operating revenue; and (2) a technical budget amendment, in the amount of $500,000 from General Fund restricted fund balance, for the purpose of transferring resources to the Golf Fund to close the fund out and eliminate the interfund liability.

***US Cellular Center Fund Settlement Expenses***

As a part of its promotional agreement with AC Entertainment (AC), the US Cellular Center shares certain revenues and expenses with AC. In prior fiscal years, when staff completed show settlements for AC events, settlement charges were netted against gross

revenues. Beginning in FY 2012-13, Finance Department staff changed the accounting procedure for these events such that settlement charges are now reflected in the US Cellular Center Fund budget as true expenses, which resulted in both higher revenues and expenses. This change in accounting procedure occurred after the FY 2012-13 budget was adopted, so no appropriation was included in the budget for the settlement expenses. The technical budget amendment will provide authorization for this expense by increasing the revenue and expense budget for the US Cellular Center Fund.

As noted above, US Cellular Center Fund operating revenues will be used to cover this technical budget amendment.

***Golf Fund Close Out***

In FY 2005-06, the City of Asheville assumed operation of the Municipal Golf Course from Buncombe County. In that fiscal year, the City established the Golf Enterprise Fund on its financial statements in order to account for the revenues, expenses, assets, and liabilities associated with operation of the course. During the current fiscal year, City Council approved a lease of the municipal golf course to Pope Golf, Inc. With Pope Golf assuming every day operation of the course, the City no longer needs to maintain the Golf Enterprise Fund on its financial statements beyond the current fiscal year.

As previously discussed with Council, there were several fiscal years in which expenses in the Golf Fund exceeded operating revenues and formal transfers in from the General Fund. As a result, a negative cash and investment position developed in the Golf Fund. When this situation occurs, the negative cash and investment position is reflected as an interfund liability (due to other funds) on the City's financial statements. As of June 30, 2012, the due to other funds liability in the Golf Fund totaled $523,831.

Because accounting and financial reporting regulations require negative cash and investment positions to be offset in other funds, the General Fund's cash and investment position was reduced by the amount above in the FY 2011-12 Comprehensive Annual Financial Report (CAFR). This amount was reflected on the General Fund balance sheet as "due from other funds" and in fund balance as "restricted Stabilization by State Statute". Since cash and investments represent the beginning point for the calculation of fund balance, the General Fund's FY 2011-12 unassigned fund balance position already reflected the impact of the negative cash position in the Golf Fund. Therefore, the close out of the Golf Fund and the elimination of the interfund liability will have no impact on the General Fund's unassigned fund balance.

City staff believes that the financial performance of the Golf Fund in FY 2012-13, which includes the first quarter of operations on the City's books as well as the lease payments received from Pope, will be slightly positive so the due to other funds liability will decrease from the $523,831 amount that was reported at the end of FY 2011-12. Therefore, in order to close out the Golf Fund, staff is requesting Council approval of a budget amendment in the amount of $500,000 in order to formally transfer resources to the Golf Fund to eliminate the interfund liability described above.

As noted above, General Fund unassigned fund balance at June 30, 2012 already reflected the financial impact of the interfund receivable from the Golf Fund, therefore this amendment has no impact on the General Fund's available fund balance. The leasing of the Municipal Golf Course to Pope Golf had a positive financial impact of approximately $210,000 by eliminating the General Fund subsidy to the Golf Fund and providing for a lease payment to the city. The proposed FY 2013-14 budget includes a lease payment of $75,000 from Pope Golf to the City of Asheville, which will be accounted for in the General Fund. All capital assets of the Municipal Golf Course will also be transferred from the Golf Fund to the General Fund.

City staff recommends City Council approve (1) a technical budget amendment, in the amount of $170,000, from US Cellular Center operating revenue, to appropriate sufficient budget to cover event settlement expenses previously netted against operating revenue; and (2) a technical budget amendment, in the amount of $500,000 from General Fund restricted fund balance, for the purpose of transferring resources to the Golf Fund to close the fund out and eliminate the interfund liability.

**ORDINANCE BOOK NO. 28 - PAGE 248**

**C. RESOLUTION NO. 13-126 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ROGERS GROUP INC. FOR THE ASPHALT PAVING IMPROVEMENTS - PHASE 1 PROJECT**

**ORDINANCE NO. 4201 - BUDGET AMENDMENT FOR ASPHALT PAVING IMPROVEMENTS - PHASE 1 PROJECT**

Summary: The consideration of (1) a resolution authorizing the City Manager to execute on behalf of the City of Asheville a contract in the amount of $1,061,272 plus a contingency of 3.6% ($38,728) with Rogers Group, Inc. for the project known as Asphalt Paving Improvements – Phase 1, City of Asheville Project # ENG-12-13-017; and (2) a budget amendment in the amount of $418,595 from prior and current year overlay and degredation fees and unspent capital reserve funds.

A number of roads in the City are beyond their time to be resurfaced. A list of warranted streets was put together to be addressed by this contract. This contract also marks the first use of the restructuring of the Public Works Department in contracting out work formerly done in-house. The project was advertised and on May 8, 2013, and due to an insufficient number of bids, advertised again on May 30, 2013. Bids were opened with Rogers Group, Inc. of Nashville, TN, being the lowest responsible bidder with a bid of $1,061,272. This unit price contract bid presents the City with potential savings compared with our Engineer's Estimate of $1,912,037. The City did its due diligence in establishing that this was a responsible bid. A 3.6% contingency ($38,728) has been added to allow payment for any unforeseen costs that typically arise during construction. The work produced from this contract would fix a number of roads that are in drastic need of repair and satiate an unhappy group of citizens.

Streets to be repaired in this contract include: Pebble Creek Dr., .T. Weaver Blvd., King St., Woodfin St., Coleman Ave., Montview Dr., Asheland Ave., Hanover St., Ravena St., and Dunkirk Rd.

The total budget for this project, including contingency, is $1.1 million. There is currently $681,405 available in the Streets Division's contracted services budget for this project. The remaining $418,595 will be appropriated via budget amendment from two sources. The first source is overlay/degredation fees collected in FY 2011-12 and FY 2012-13 through the City's Street Cut Utility program. To date, the City has collected $227,952 from these fees. The fees collected in FY 2011-12 were included in assigned fund balance in last year's audit report, so their appropriation will have no impact on the City's unassigned fund balance percentage. The remaining $190,643 needed for this contract will be appropriated from unspent capital reserve funds. City accounting staff has recently closed a number of completed capital projects, and as of June 17, the City had approximately $350,000 in unexpended capital funds. Staff has already recommended that $75,000 from this balance be allocated to next year's Capital Improvement Program, leaving an available balance of $275,000. If Council approves this additional appropriation of $190,643 for the paving contract, there will be approximately $85,000 remaining in unspent capital funds (i.e. capital reserve).

City staff recommends City Council adopt: 1) the resolution awarding the contract to Rogers Group, Inc. and authorizing the City Manager to execute on behalf of the City of Asheville

a contract in the amount of $1,061,272 plus a contingency of 3.6% ($38,728) with Rogers Group, Inc. for the project known as Asphalt Paving Improvements – Phase 1, City of Asheville Project # ENG-12-13-017; and 2) a budget amendment in the amount of $418,595 from prior and current year overlay and degredation fees and unspent capital reserve funds.

When Councilman Bothwell asked if the contractor pays a living wage, Streets & Engineering Manager Greg Shuler said that he was not sure. However, he said that provision was not part of the contract when it was negotiated.

Councilman Bothwell said that when we let contracts for jobs that are saving the City money, we should make sure that they adhere to our living wage policy.

**RESOLUTION BOOK NO. 35 - PAGE 328**
**ORDINANCE BOOK NO. 28 - PAGE 251**

**D. ORDINANCE NO. 4202 - ORDINANCE AMENDING THE FEES & CHARGES MANUAL SUCH THAT RENTAL FEE FOR ANY ADDITIONAL MUNICIPAL SOLID WASTE ROLL-OUT CARTS IS THE SAME PRICE AS THE STANDARD MUNICIPAL SOLID WASTE FEE**

Summary: The consideration of an ordinance amending the Fees and Charges Manual such that the rental fee for any additional municipal solid waste roll-carts is the same price as the standard municipal solid waste fee.

Currently solid waste customers can pay a rental fee of $6.90 per month per cart to have additional an 96-gallon rolling garbage cart. In March 2013, Asheville City Council changed the sanitation fee structure to $7.00 per household per for standard garbage collection and removed the cost for recycling service. The new fee structure supports Council's strategy to reduce the amount of waste going into the landfill by connecting the fee to solid waste collection instead of recycling. The currently proposed ordinance amendment would change the fee for additional solid waste roll carts from $6.90 per month per cart to $7.00 per month per cart. This adjustment is recommended to remove the price signal that the more your throw away the less you pay for the service.

The $1,642 increase in revenue would occur in the general fund. This additional revenue will support expanding the long term strategy to reduce city-wide solid waste.

City staff recommends City Council adopt an ordinance to amend the Fees and Charges Manual.

**ORDINANCE BOOK NO. 28 - PAGE 253**

**E. RESOLUTION NO. 13-142 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANTS VIA THE N.C. DEPT. OF COMMERCE SMART GRID PROGRAM**

**ORDINANCE NO. 4203 - BUDGET AMENDMENT TO ACCEPT GRANTS FOR ENERGY EFFICIENCY PROJECTS**

Summary: The consideration of (1) a resolution authorizing the City Manager to accept grant funds via the N.C. Dept. of Commerce Smart Grid Program Grant; and (2) a budget amendment, in the amount of $6,352, in revenue from the fuel monitoring grant, and $1,203 from Duke Energy Progress, for energy efficiency rebates.

The Smart Grid Program Grant is an initiative led by the NC Department of Commerce to increase their understanding of state and municipal government fuel consumption trends by

installing smart grid technology at municipal fuel stations and analyzing the data across North Carolina. The grant funds will be used by the City of Asheville to supplement the Energy Analyst's time spent analyzing and reporting the data to the state. The funds received from Duke Energy Progress are for the ongoing energy efficiency retrofits across the city such as lighting and will be used to supplement the Energy Analyst's time project managing those retrofits.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to accept grant funds via the N.C. Dept. of Commerce Smart Grid Program Grant; and (2) a budget amendment, in the amount of $6,352, in revenue from the fuel monitoring grant, and $1,203 from Duke Energy Progress, for energy efficiency rebates.

**RESOLUTION BOOK NO. 35 - PAGE 364**
**ORDINANCE BOOK NO. 28 - PAGE 255**

**F. RESOLUTION NO. 13-127 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH R & W INC. FOR THE RENOVATION OF THE ASHEVILLE POLICE DEPARTMENT HVAC SYSTEM**

**ORDINANCE NO. 4204 - BUDGET AMENDMENT FOR THE ASHEVILLE POLICE DEPARTMENT HVAC SYSTEM**

Summary: The consideration of (1) a resolution authorizing the City Manager to enter into a contract with R & W Incorporated for the renovation of the HVAC system serving the Police Department evidence rooms located in the Municipal Building; and (2) a budget amendment in the amount of $100,000 from previously budgeted funds and savings in other capital projects that came in under budget.

The HVAC system for the evidence rooms in the Municipal Building is not a dedicated system. Changes and additions have been accomplished over the years and a HEPA filtration system is currently in place.

A dedicated HVAC system for the evidence rooms will meet the specific requirements of the Asheville Police Department Accreditation standards and create a safer environment for employees. The new system will be interconnected to the controls for the building, maintaining Facility staff's ability to manage and supervise the equipment remotely. The HEPA filtration system will be incorporated into this new system.

R & W Incorporated was the low responsible bid. The project has the potential for unknown conditions making additional work and cost a possibility. The contractor and facility staff are committed to reducing these by working as a team. The base bid for the HVAC system is $94,767.

Due to the uncertainty in utilizing existing system parts and building components staff recommends Council authorize $100,000 for the project. The FY 2013-14 Police Department operating budget includes $50,000 for this project. The remaining $50,000 will be taken from the McCormick Field resurfacing capital project, which came in under budget. The budget amendment will provide authorization to create a $100,000 project in the City's General Capital Projects Fund.

The cost of the base bid for the renovation of the evidence rooms HVAC is $94,767. Unknowns are present and could increase the project cost. The total cost of the project including the unknowns is anticipated not to exceed $100,000. As noted above, the Police Department FY 2013-14 operating budget already includes $50,000 for this project. The remaining $50,000 will come from the McCormick Field resurfacing capital project, which came in under budget.

City staff recommends that City Council (1) adopt a resolution authorizing the City Manager to sign the contract with R & W Incorporated and future change orders associated with the project not to exceed the total approved budget amount; and (2) adopt a budget amendment in the amount of $100,000 from previously budgeted funds and savings in other capital projects that came in under budget.

**RESOLUTION BOOK NO. 35 - PAGE 329**
**ORDINANCE BOOK NO. 28 - PAGE 257**

**G. RESOLUTION NO. 13-128 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH RIVERLINK INC. TO RECEIVE FUNDS FROM THE CLEAN WATER MANAGEMENT TRUST FUND**

Summary: The consideration of a resolution allowing the City Manager to enter into a Memorandum of Understanding with RiverLink, Inc to receive funds from the Clean Water Management Trust Fund (CWMTF) and to sign any necessary documents that may be required by CWMTF.

This City of Asheville is currently in the design phase of the Craven Street improvement project. This project consist of a complete street design which includes bike lanes, sidewalk, on street parking, a greenway associated with the project, a Low Impact Parking Lot, stream restoration and stormwater quality best management practices (BMP's). The city has been working with RIverLink, Inc. on an application for CWMTF. The trust fund has awarded RiverLink, Inc. $400,000 for work associated with water quality improvements in the Craven Street sub water shed. RiverLink plans to make available for the city's stormwater BMP's $365,000 for these improvements. The remaining portion will be used by RiverLink for public outreach and water quality testing in the project area.

The primary goal associated with these CWMTF funds are to reduce the stormwater pollutants through the installation of a stormwater BMP's and also to provide additional storage in the project area. The city's project will also provide a much needed stream bank restoration through the New Belgium Property. The stream restoration will not be funded through the CWMTF.

Successful implementation of this project will protect and enhance water quality of the French Broad River Basin by reducing typical runoff pollutants that are released into the river.

The City of Asheville must provide assurance to the North Carolina Clean Water Management Trust Fund that it understands the functions and obligations to which the City is committing itself in order to carry out the work described in this grant contract, and also commit that the City of Asheville will proceed with diligence to perform those functions and obligations to accomplish the work described in any grant contract that may result from the original application. This can be performed by entering into a Memorandum of Understanding with RiverLink for this work.

The City had the opportunity to assist in the application of this grant in which RiverLink was granted funding through the CWMTF for the implementation of this project. The City of Asheville will receive $365,000 toward the implementation of this project in which the funding will be transferred through RiverLink. The City will be responsible for the implementation of the grant contract and will be required to provide documentation associated with the project cost and other information to both RiverLink and the CWMTF. The City will be responsible for in kind match and also cash match for the CWMTF project of $717,800. The city will be responsible to secure the necessary easements through our willing partner New Belgium Brewery for the stormwater BMP's, which will be included as part of this match. Other grant sources can be used as part of

the cash match. The City's out of pocket cash match for this partnership will be $200,000 of which funding will be coming from the Stormwater Utility fee.

A budget amendment to appropriate this grant funding, along with all of the other revenue sources for the Craven Street/New Belgium project, will be forth coming at the same time the construction contract is brought forth for approval.

Staff recommends City Council to authorize the city manager to enter into a Memorandum of Understanding with RiverLink, Inc. on behalf of the City of Asheville for the work associated with this project and also authorizes the city manager to sign all other application or contract documents required to carry out the City's obligations.

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**H. RESOLUTION NO. 13-129 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES HOME FOOTBALL GAMES ON JULY 20 AND AUGUST 3, 2013**

**RESOLUTION NO. 13-130 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE FRENCH BROAD CYCLING CLASSIC MID-RACE MIXER ON JULY 20, 2013**

**RESOLUTION NO. 13-131 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE NEW BELGIUM CLIPS BEER & FILM TOUR ON SEPTEMBER 6, 2013**

**RESOLUTION NO. 13-132 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BIG LOVE FEST ON SEPTEMBER 15, 2013**

**RESOLUTION NO. 13-133 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE DOG DAY AFTERNOON ON SEPTEMBER 22, 2013**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Grizzlies Home Football Games on July 20 and August 3, 2013; the French Broad Cycling Classic Mid-Race Mixer on July 20, 2013; the New Belgium Clips Beer & Film Tour on September 6, 2013; The Big Love Fest on September 15, 2013; and Dog Day Afternoon on September 22, 2013.

- Asheville Grizzlies has requested through the City of Asheville Development Services Department that City Council permit them to serve beer and/or unfortified wine at the Asheville Grizzlies Home Football Games and allow for consumption at this event.

  The Asheville Grizzlies Home Football Games will be held on Saturday, July 20 and August 3, 2013, from 5:00 p.m. – 10:00 p.m. within the boundaries of Memorial Stadium, as referenced on the accompanying site map.

- Asheville Bicycle Racing Club has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the French Broad Cycling Classic Mid-Race Mixer and allow for consumption at this event.

The French Broad Cycling Classic Mid-Race Mixer will be held on Saturday, July 20, 2013, from 6:00 p.m. – 9:00 p.m. within the boundaries of Town Square Blvd. between Schenck Parkway and Barnack Way, as per the event area limits referenced on the accompanying site map.

- New Belgium Brewing Company in conjunction with Asheville on Bikes has requested through the City of Asheville Development Services Department that City Council permit them to serve beer and/or unfortified wine at the New Belgium Clips Beer & Film Tour and allow for consumption at this event.

  The New Belgium Clips Beer & Film Tour will be held on Friday, September 6, 2013, from 7:00 p.m. – 10:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green and Reuter Terrace, City Hall/Courthouse Parking Lot and Spruce Street between the intersections of South Pack Square and College Street, as referenced on the accompanying site map.

- The Asheville City Schools Foundation has requested through the City of Asheville Development Services Department that City Council permit the sale of beer and/or unfortified wine at The Big Love Fest and allow for consumption at this event.

  The Big Love Fest will be held on Sunday, September 15, 2013, from 12:00 p.m. – 8:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green, Reuter Terrace, Vance Median and Raised Lawn areas including South Spruce Street between the intersections of South Pack Square and College Street, North Pack Square between the intersections of Biltmore Avenue and South Pack Square, South Pack Square between the intersections of Biltmore Avenue and South Market Street and within the City Hall/Courthouse Parking Lot as per the area limits referenced on the accompanying site map.

- Brother Wolf Animal Rescue has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at Dog Day Afternoon and allow for consumption at this event.

  Dog Day Afternoon will be held on Sunday, September 22, 2013, from 12:00 p.m. – 4:00 p.m. within the boundaries of Carrier Park, as per the event area limits referenced on the accompanying site map.

City staff recommends City Council adopt the resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Grizzlies Home Football Games, French Broad Cycling Classic Mid-Race Mixer, New Belgium Clips Beer & Film Tour, The Big Love Fest, and Dog Day Afternoon

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I. **RESOLUTION NO. 13-134 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A DONATION OF 0.23 ACRES OF REAL PROPERTY FROM DUKE ENERGY PROGRESS TO SUPPORT THE CRAVEN STREET TRANSPORTATION IMPROVEMENT PROJECT**

Summary: The consideration of a resolution authorizing the Mayor to accept a donation of 0.23 acres of real property from Duke Energy Progress for the purpose of implementing the Craven Street Improvement Project.

Duke Energy Progress (formerly known as Progress Energy of the Carolinas, and Carolina Power & Light) owns approximately 0.23 acres of unimproved land at the intersection of Haywood Road and Craven Street. This property is located along French Broad River and adjacent to the New Belgium Brewery site. As part of the Craven Street Improvement Project, a section of the greenway will travel through the 0.23 acre area currently owned by Duke Energy Progress. At this time, Duke Energy Progress has offered to donate the 0.23 acre property to facilitate the installation of the greenway.

City will be responsible for all due diligence associated with the transfer, including title research and boundary survey. These minimal costs will be absorbed within the existing project budget for the Craven Street Improvements Project.

City staff recommends that City Council adopt the resolution authorizing the Mayor to accept a donation of real property from Duke Energy Progress for the purpose of implementing the Craven Street Improvement Project.

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**J. RESOLUTION NO. 13-135 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT BY DONATION OR OTHERWISE ANY AND ALL LEGAL INTERESTS IN REAL PROPERTY NEEDED FOR THE IMPLEMENTATION OF THE CRAVEN STREET IMPROVEMENT PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to accept by donation or otherwise, any and all legal interests in real property needed for the implementation of the Craven Street Improvement Project.

The Craven Street Improvement Project consists of several public infrastructure improvements, including (1) widening and resurfacing of the existing roadways, (2) adding bike lanes and greenways to the Craven St. corridor, and (3) installing new sidewalks, regional stormwater infrastructure and other related improvements. A majority of the work will be performed within the existing right-of-way of Craven Street. The remaining work will require the acquisition of interest in private property to include but not limited to: easements for greenway, storm water and streets. Most of the permanent easements are planned within the New Belgium property and will be donated to the City. Staff has been in contact with other property owners impacted by the improvements, and anticipates donation or modest in-kind services (such as repaving a driveway) in exchange for the easements. To streamline the process, staff is requesting that City Council authorize the City Manager to accept all legal interest in real property associated with this project, through donation or otherwise.

The City's internal real estate and legal team will be responsible for obtaining all legal interest in real property associated with this project. Modest costs for in-kind services, nominal consideration, deed recording fees, surveys, etc. have been budgeted within the existing project budget for the Craven Street Improvements Project.

City staff recommends that City Council adopt the resolution authorizing the City Manager to accept all legal interest in real property through donation or otherwise for the purpose of implementing the Craven Street Improvement Project.

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**K. RESOLUTION NO. 13-136 - RESOLUTION AUTHORIZING THE DONATION OF AN OBSOLETE MAGNESIUM CHLORIDE TANK AND RESIDUAL MATERIALS TO THE TOWN OF BLACK MOUNTAIN**

Summary: The consideration of a resolution donating an obsolete magnesium chloride tank and residual material to the Town of Black Mountain.

Public Works Department has an old magnesium chloride tank and residual material that is no longer of any use to the City of Asheville for snow fighting efforts, which the Town of Black Mountain has requested.

N.C. Gen. Stat. sec. 160A-280 allows municipalities to donate surplus, obsolete or unused equipment, materials and supplies to other governmental entities, provided public notice is provided five (5) days prior to adoption of a resolution approving the donation. The Department is eliminating the magnesium chloride in its snow fighting operation due to the noncompliance of the tank, and replacing same with an equivalent that is more modern. The Town of Black Mountain will be solely responsible for all costs associated with transferring the asset to their location.

City staff recommends City Council adopt a resolution approving the donation of the magnesium chloride tank and residual materials to the Town of Black Mountain.

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**L. RESOLUTION NO. 13-137 - RESOLUTION REPLACING THE CITY'S SELF-INSURED MEDICAL PLAN FOR RETIREES WITH ACCESS AND/OR ENROLLED IN MEDICARE TO A FULLY INSURED MEDICARE CARVE OUT PLAN**

Summary: The consideration of a resolution to adopt changes regarding retiree health benefits under the City of Asheville self-insured health plan for retirees or retiree spouse that gain access to Medicare and update the Resolutions section related to retirees' failure to make timely payments of premiums.

As the City continues to monitor the health insurance fund and benefit programs, we have identified an option for a City sponsored fully insured health plan for all retirees with access to Medicare. This change would move retires that have access and/or are currently enrolled in Medicare from the City's self insured plan to this new fully insured plan. In order to make this change, Council would need to amend prior resolutions regarding retiree benefits.

The City of Asheville has since 1993 provided retirees with access to Medicare, through age and/or disability, the opportunity to remain on the City's retiree medical plan by paying the full cost of the coverage and enrolling in Medicare. The retiree's benefits remain the same as that of active employees, except that Medicare pays claims as primary and the City's insurance plan pays secondary.

Most retirees that gain access to Medicare drop the City's Retiree Medical coverage in favor of individual Medicare Supplement plans because the monthly premium is typically lower than remaining on the City's medical plan. The current number of Retirees with Medicare who remain covered on the City's plan is fourteen. With such a small number of members in this category, the actual cost for these retirees is unpredictable because their claims vary dramatically from year to year. Because the claims are unpredictable, and rates must be set for an entire year; if claims plus expenses/fees are significantly higher than the premiums charged to these retirees, the City may inadvertently be subsidizing the retirees; or if the claims plus expenses/fees are significantly lower than the premiums charged to the retirees, the City may be collecting more

than is necessary. The recommended change will allow the City to ensure that retirees are paying the full cost for the insurance.

In an effort to promote Council's employer of choice strategic goal by providing the best and most cost effective insurance, the City of Asheville requested that our brokerage firm, The Ferguson Employee Benefit Agency, initiate a formal bidding process to review fully insured insurance alternatives for Retirees with Medicare.

AmWINS provided a fully insured quote for a Medicare carve out plan that offers the retiree lower premiums ($369-$460 per month) with similar benefits and out of pocket cost for medical expenses. The current premium paid by these retirees range from $549-$708 per month for the City's Retiree medical insurance.

The other change relates to a change made in July 2012 to the Retirees billing and collection process. This change was made to better align premium collection with the benefit period, minimize the Plan's exposure, and to take advantage of technological improvements in billing/collection methods. Staff is recommending approval of a change to the resolutions to refer to the City's billing policy, rather than specific processes that may change over time. In addition it would reflect the billing policy for the fully insured provider administering the Medicare Carve out plan.

Pros:

- Retirees with Medicare would see a reduction in their monthly premium for similar benefit coverage.
- AmWINS would assume all billing, premium collection, customer service and renewal communication for this group of retirees.
- The claims and expenses/fees would be insured and would no longer impact the City's self-funded medical experience.
- The City would have no liability for claims that take place after 7/1/13 through the self insured medical plan or in financial accounting of OPEB (Other Post Employment Benefits).

Cons:

This action is not expected to have an overall financial impact on the Health Insurance Fund; however it will eliminate the year-to-year volatility that can be present in retiree health care claims.

City staff recommends City Council adopt a resolution to amend the retiree health benefits for those eligible for Medicare, under the City of Asheville self-insured health plan for retirees or retiree spouse that gain access to Medicare and update the resolutions to allow City staff and Insurance Company to manage Retiree billing consistent with their internal billing policy.

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**M. ORDINANCE NO. 4205 - FIRST READING OF AN ORDINANCE REVISING A FRANCHISE AGREEMENT FOR THE OPERATION OF A TROLLEY BIKE TOUR SERVICE (PUB CYCLE) WITHIN THE CITY OF ASHEVILLE IN ORDER TO BEGIN ON DATE OF COMMENCEMENT OF OPERATIONS**

Summary: The consideration of an ordinance revising a franchise agreement for the operation of a trolley bike tour service (pub cycle) within the City of Asheville.

City Council approved ordinance # 4149 on December 11, 2012 (first reading) and on January 8, 2013 (second and final reading) granting a franchise agreement for the operation of a trolley bike tour service (pub cycle). Amazing Pubcycle (the grantee) is getting close to starting operations and is asking that the one-year franchise term be changed from beginning on March 1,

2013, to beginning on date of commencement of operations. At this time, it is anticipated that the service will begin during August 2013. The change is needed to help ensure the success of the service by providing a full year of operations and to ease any concerns from the lender.

Staff recommends that City Council approve an ordinance revising a franchise agreement to Peech Development, Inc. d/b/a Amazing Pubcycle for the operation of a trolley bike tour service (pub cycle) within the City of Asheville.

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**N. RESOLUTION NO. 13-138 - RESOLUTION AUTHORIZING THE CITY MANAGER TO RECEIVE GRANT MONEY FROM THE STATE OF N.C. DEPT. OF PUBLIC SAFETY HOMELAND SECURITY GRANT PROGRAM FOR RECONSTRUCTION AND UPGRADE OF A REGIONAL WIRELESS COMMUNICATIONS TOWER**

Summary: The consideration of a resolution authorizing the City Manager to receive a grant in the amount of $47,335 from the Fiscal Year 2011 Homeland Security Grant Program administered by the N.C. Dept. of Public Safety for reconstruction and upgrade of a regional wireless communications tower.

The City of Asheville and the North Carolina State Highway Patrol have long been partners in developing and maintaining regional communications resources for Emergency Responders in the WNC region. This relationship has created efficiencies and opportunities for cost savings by eliminating duplication of resources and collaborating on regional communications related projects. On October 30, 2012, the High Windy tower in east Buncombe County experienced a catastrophic failure as a result of high winds related to Hurricane Sandy. Grant funds from the Fiscal Year 2011 Homeland Security Grant Program have been identified to rebuild the tower. Reconstruction will enhance the ability of City of Asheville Police and Fire Departments and other regional Emergency Responders to communicate during a disaster or other emergency that requires the coordination and communication between multiple jurisdictions. This grant is 100% reimbursed by the N.C. Dept. of Public Safety.

These funds are a reimbursement grant from the Department of Homeland Security and once received will be re-assigned to the NCSHP for project management. There is no impact to the City's General Fund budget.

City staff recommends City Council authorize the City Manager to receive grant money from the State of North Carolina Homeland Security Grant Program.

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**O. RESOLUTION NO. 13-139 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2013 INGLES 4TH OF JULY CELEBRATION**

**RESOLUTION NO. 13-140 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2013 BELE CHERE FESTIVAL**

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2013 Ingles 4th of July Celebration and the 2013 Bele Chere Festival.

The Benevolent Patriotic Order of the Does has requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer at the 2013 Ingles 4th of July Celebration and allow for consumption at this event.

The 2013 Ingles 4th of July Celebration will be held at Pack Square Park on Thursday, July 4, 2013, from 4:00 p.m. to 10:00 p.m. The sale of malt beverages will end at 9:30 p.m. However, the possession of open containers of malt beverages or consumption of malt beverages would be allowed during the festival hours of 4:00 p.m. to 10:00 p.m.

The following organizations: Wild South, Asheville Ski Club, Asheville Area Paralegals, BPO Does, The Mediation Center, Cataloochee Ski Patrol, PBL –AB Tech, St Johns Episcopal Church, Green Opportunities, Asheville Breakfast Rotary Club, and Engineers without Borders, Blue Ridge Roller Girls, and Sigma Nu have requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the 2013 Bele Chere Festival and allow for consumption at this event.

The 2013 Bele Chere Festival's Festival Area will be open on Friday, July 26, 2013, from 12:00 noon to 10:00 p.m., Saturday, July 27, 2013, from 10:00 a.m. to 10:00 p.m. and Sunday, July 28, 2013 from 12:00 noon to 6:00 p.m.

The sale of malt beverages and/or unfortified wine will occur only on Friday, July 26, 2013, and Saturday, July 27, 2013, and will end at 9:45 p.m. in both instances; however, the possession of open containers of malt beverages and/or unfortified wine or consumption of malt beverages and/or unfortified wine would only be allowed during the periods as follows:

Friday, July 26, 2013, from 12:00 Noon to 10:00 p.m.
Saturday, July 27, 2013, from 10:00 AM to 10 p.m.

There will be no sales and/or consumption of malt beverages and/or unfortified wine permitted on Sunday, July 28, 2013.

City staff recommends City Council adopt resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2013 Ingles 4th of July Celebration and the 2013 Bele Chere Festival.

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**RESOLUTION NO. 13-140 - RESOLUTION BOOK NO. 35 - PAGE 358**

**P. RESOLUTION NO. 13-141 - RESOLUTION SETTING A PUBLIC HEARING ON JULY 23, 2013, FOR A SUBSTANTIAL AMENDMENT TO THE 2013-14 CONSOLIDATED ANNUAL ACTION PLANS FOR CDBG AND HOME TO CONSIDER A SECTION 108 LOAN TO EAGLE MARKET STREETS DEVELOPMENT CORPORATION FOR THE EAGLE MARKET PLACE COMMERCIAL DEVELOPMENT**

Summary: The consideration of a resolution setting a public hearing on July 23, 2013, for a substantial amendment to the 2013-2014 Consolidated Annual Actions Plan for CDBG and HOME to consider a Section 108 Loan to Eagle Market Streets Development Corporation for the Eagle Market Place commercial development.

Eagle Market Streets Development Corporation (EMSDC) has requested that the City loan $718,000 from an existing HUD Section 108 loan for the Eagle Market Place commercial development. This loan was received by the City in 2004 for the purpose of assisting in the financing of a mixed-use development in the Eagle-Market Streets area. EMSDC proposes to rehabilitate and develop approximately 10,000 square feet of commercial rental space in the Del Cardo, Ritz and Dr Collette buildings located on Eagle and Market Streets in downtown Asheville.

The substantial changes to the project funded by HUD in 2003 and the proposal under consideration include:

- Development Partners: EMSDC originally was partnered with the MT Zion Development Corporation, Enterprise Foundation and Historic Acquisitions, Inc. EMSDC is now partnering with Mountain Housing Opportunities.
- Square footage of project by uses: The total leasable building area of 13,000 square feet included five residential units encompassing approximately 3,000 square feet and approximately 10,000 square feet of commercial space. The current project includes 62 residential units, and 10,000 square feet of commercial space.
- Sources, types and funding levels: The original project's estimated total development cost was $2,413,514. Sources included the Section 108 loan ($800,000), Grants, including CDBG and HUD EDI grant funding ($870,000) and equity of $743,514. The current commercial-only project estimated total development cost is $2,351,678, and includes HUD Section 108 funding ($718,000); NeighborWorks Capital loan ($1,509,172) and grant or deferred loans of $124,506.

The proposed amendment uses funds already available through the CDBG program. The program advances CDBG funds to the City. These funds must be repaid to HUD, either from program proceeds or by using future CDBG allocation to the City. The City has been asked by the developer to provide sufficient collateral to allow HUD to approve the release of these funds for the stated purpose.

Staff recommends that Council set a public hearing on July 23, 2013, for consideration of amendments to the 2013-2014 Consolidated Annual Action Plans.

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Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Bothwell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Pelly and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. AFFORDABLE HOUSING ADVISORY COMMITTEE UPDATE

Ms. Lindsey Simerly, Chair of the Affordable Housing Advisory Committee, briefed Council on their activities of the past year and goals for the upcoming year.

After Mayor Bellamy suggested some additional partners, on behalf of City Council, Mayor Bellamy thanked Ms. Simerly for her leadership and the entire Committee for their dedication.

### B. LEGISLATIVE & WATER UPDATE

Deputy City Manager Jeff Richardson highlighted for Council some following legislative issues of interest: House Bill 488 - Transfer Control of the City of Asheville's Water System to a Regional Entity; House Bill 252 - Asheville Transfers; House Bill 418 - Park Authority; House Bill 224 - Asheville Extraterritorial Jurisdiction and Annexation; House Bill 568 - Asheville Deannexation; House Bill 708 - Study Public Enterprise Systems/Use of Funds; House Bill 998 -

Tax Simplifications and Reduction Act; House Bill 94/Senate Bill 112 - Amendments to Environmental Laws 2013; Senate Bill 612 - Regulatory Reform Act of 2013; House Bill 813/Senate Bill 724 - Ban Synthetic Cannabinoids; House Bill 937 - Amend Various Firearms Laws; and House Bill 714/Senate Bill 443 - Disposition of Abandoned Firearms.

In response to Mayor Bellamy, Mr. Richardson said that the fiscal impact of ratified legislation on Asheville revenue for this fiscal year was House Bill 224 (ETJ Elimination); and House Bill 252 (Water Contribution to Capital).

Regarding House Bill 252, Mayor Bellamy noted that the only year the City spent more than $145,000 was this fiscal year for Azalea Road. Other than that, we have not been using the 5% to the fullest extent of our abilities.

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING AN UNOPENED RIGHT-OF-WAY BETWEEN TARPON AND CRAGGY AVENUES**

**RESOLUTION NO. 13-143 - RESOLUTION TO PERMANENTLY CLOSE AN UNOPENED RIGHT-OF-WAY BETWEEN TARPON AND CRAGGY AVENUES**

Mayor Bellamy said that the public hearing to consider a resolution to permanently close an unopened right-of-way between Tarpon and Craggy Avenues was held on May 28, 2013, and continued until this date in order to give the property owners sufficient time to discuss a requested pedestrian easement.

N. C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, all of the adjoining property owner's (Bob and Caryn Hanna, Jody Guokas, Isaac Savage, Jim and Nancy Herrig, James and Martha Roberson, and Michael Kohnle and Deidre Duffy) have requested the City of Asheville to permanently close an unopened right-of-way between Tarpon and Craggy Avenues.

The Metropolitan Sewer District has identified a sewer line crossing mid-way in the right-of-way. An approved easement would need to be included in the revised property configuration.

The initial closure request included a provision to retain a pedestrian easement through the space; however, based on site constraints and a recommendation from the Traffic Engineering, a retained easement would not make for a viable pedestrian connection due to insufficient space to construct said facility.

The Greenway Commission reviewed this closure request at their meeting on May 9, 2013 and concurred with the initial request to include a pedestrian connection.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

City staff recommends City Council adopt the resolution to permanently close the unopened right-of-way between Tarpon and Craggy Avenues.

Mayor Bellamy opened the public hearing at 5:34 p.m. to ask for public comment on any of the new information.

Ms. Caryn Hanna, property owner, said that the adjoining property owners asked for Council's support to close the right-of-way without the pedestrian easement, as recommended by the Traffic Engineer.

Mayor Bellamy closed the public hearing at 5:35 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 13-143. This motion was seconded by Councilman Davis and carried unanimously.

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**B. PUBLIC HEARING TO CONSIDER REZONING 42 OLD COUNTY HOME ROAD FROM HIGHWAY BUSINESS DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT**

**ORDINANCE NO. 4206 - ORDINANCE TO REZONE 42 OLD COUNTY HOME ROAD FROM HIGHWAY BUSINESS DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT**

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone 42 Old County Home Road from Highway Business District to RM-8 Residential Multi-Family Medium Density District. This public hearing was advertised on June 14 and 21, 2013.

Mr. Esselstyn said that the subject site for this rezoning petition is a 1.3-acre parcel near New Leicester Highway. The property fronts on Old County Home Road, and is near commercial and industrial uses, but the majority of the length of the road is residential in character. The property is currently zoned Highway Business, but owing to constraints such as the flood hazard areas shown at right, the development potential is limited.

Normally, when examining a standard rezoning petition, the applicant's plans for development do not figure prominently in the staff report (as all possible development scenarios should be considered), but in this case, the plans are pertinent to understanding the nature of the request. The applicant would like to develop four or five single-family homes on the property. The existing zoning allows single family dwellings, and a residential density of 32 units per acre, but the standards for lot width and front setback would not allow the traditional single-family configuration desired by the applicant. Similarly, the RM-6 zoning classification to the west could theoretically allow for eight units, but the 70-foot minimum lot width would preclude the familiar single-family configuration desired. (The flood hazard areas also necessitate locating the structures closer to the road, eliminating any practicality for a flag-lot type configuration.) Staff also discussed the possibility of a Board of Adjustment variance or conditional zoning with the applicant, but his preference would be to not have the land encumbered with special conditions outside of what is normally allowed in the zoning district.

While the property's current zoning would allow for a wide range of commercial, office, and public uses, the most recent use was a single-family home. Analysis of the site and its constraints, in conjunction with the requirements imposed by the Highway Business development standards, indicate that the current zoning could invite a highly incongruous design—flood hazards pushing structures towards the street and suburban setbacks pushing structures away from the street could result in a relatively tall structure on a small footprint. Further, the character of the area does not fit the description of a "highway business" environment.

The UDO (7-8-16(a)) states, "The Highway Business District is established to address the needs of commercial development along major thoroughfares. Automobile oriented development

is prevalent within this district and a wide range of commercial uses is permitted. Due to the dominance of the automobile, a major objective within this district is to preserve the traffic capacity of the thoroughfare." While New Leicester Highway qualifies as a major thoroughfare, this section of Old County Home Road is removed enough from the corridor that the objectives of the HB district are much less applicable.

By contrast, the UDO's stated intent for the RM8 district (from 7-8-6(a)) is "to permit a full range of medium density multi-family housing types along with single-family detached and attached residences. This district is intended to provide a transitional area between high density single-family and multi-family areas, and to permit medium density multi-family development in areas where existing conditions make higher density development inappropriate. Non-residential development normally required to provide the basic elements of a balanced and attractive residential area is also permitted."

The question of spot zoning was raised during the staff analysis, as the proposed zoning would be creating a relatively small single-parcel zoning district. However, counsel from the Legal Department as well as Planning staff investigation of precedents indicate that when the proposed district is as similar to its neighbor as RM-8 is to RM-6, the validity of such a zoning decision is fortified. In addition, spot zoning challenges are typically aroused when a proposed rezoning would increase the potential development intensity, not from a downzoning such as this petition is requesting.

In addition to the flood hazard constraints mentioned above, it should be noted that there are other characteristics of the site which could be characterized as challenges for residential development. There is an active rail line less than 90 yards from the southeast property boundary, and the section of Old County Home Road to the west, while City-maintained, does not meet current City standards such as pavement width, gutters, and lighting. That said, the current zoning would allow for a multi-story multi-family residential development at a significantly higher density than would the proposed zoning.

At their June 5, 2013, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning. During the public hearing for this item, one neighboring property owner spoke in favor of the rezoning request. In addition to this neighbor, staff has been contacted by one other property owner who was seeking additional information.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Staff's analysis indicates that the proposed zoning district would support appropriate development and prevent incompatible development more effectively than the existing zoning, and, accordingly, staff recommends approval.

Mayor Bellamy opened the public hearing at 5:38 p.m., and when no one spoke she closed the public comment at 5:38 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hunt found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4206. This motion was seconded by Councilman Pelly and carried unanimously.

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C. **PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE MINOR ADJUSTMENTS TO THE MOBILE FOOD VENDING ORDINANCE AND TO REMOVE LIMITATIONS ON THE NUMBER OF PERMITS ALLOWED TO OPERATE IN THE DOWNTOWN CENTRAL BUSINESS DISTRICT AREA**

**ORDINANCE NO. 4207 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE MINOR ADJUSTMENTS TO THE MOBILE FOOD VENDING ORDINANCE AND TO REMOVE LIMITATIONS ON THE NUMBER OF PERMITS ALLOWED TO OPERATE IN THE DOWNTOWN CENTRAL BUSINESS DISTRICT AREA**

Urban Planner Alan Glines said that this is the consideration of an ordinance to amend the Unified Development Ordinance to provide minor adjustments to the mobile food vending ordinance and to remove limitations on the number of permits allowed to operate in the downtown Central Business District area. This public hearing was advertised on June 14 and 21, 2013.

The mobile food vending ordinance was adopted late in the summer of 2011 and has been in place for over a year and half. An amendment was brought forward at the end of 2012 that added limitations on the number of truck permits in Biltmore Village and provided other small changes to the ordinance. The current amendment seeks to:

- Remove the limit on the number of trucks allowed in the downtown area (currently limited to ten trucks) but maintain the limit of a single truck per an individual in Biltmore Village and in the downtown national register district area;
- Allow dining areas (with furniture) if a mobile food site is able to meet NC State Building code requirements for dining uses; and
- Adjust the language in the ordinance to maintain a prohibition of temporary facilities such as tents and restroom facilities at a mobile food site.

By the end of 2012 there were nine truck renewals in the downtown CBD for the 2013 operating year and the tenth permit was quickly applied for and approved. There are no permits available now and truck operators asked the Downtown Commission to consider expanding the number allowed. After numerous discussions with the mobile food vending subcommittee, it was noted that truck permits are naturally limited by the number of suitable mobile food sites. Locations are difficult to secure because it usually means displacing some other income-generating use on a lot such as surface parking. Given those intrinsic limiting factors, the proposal is to maintain the recently passed Biltmore Village limitation of two trucks but remove the downtown limit of ten. Related to this, the code would receive a minor amendment to maintain the current limit of a single truck permit allowed for an individual (or corporation) in Biltmore Village and in the downtown historic district (corresponding to the adopted map '*Traditional Downtown Core*'). In other areas an individual could be approved for more than a single truck permit. This amendment is felt to maintain the variety and diversity of mobile food vendors.

The second proposed change was a discussion to allow dining areas at mobile food sites. Since dining uses are allowed under the regulations of the NC State Building code it was thought that if a site could comply with those rules, then dining should not be prohibited by the ordinance. One of the compliance issues for a mobile food site will be access to restroom facilities by dining patrons. Some sites may be able to meet this requirement now or in the future with access to or proximity to restroom facilities either sharing a facility with a building on the same site or by agreement with an adjacent building. Compliance will be reviewed with the application and site plan for the mobile food site.

Finally the mobile food vending subcommittee also felt that temporary facilities such as tents and temporary restroom facilities should not be allowed at the mobile food site since this

could negatively affect the look and character of the downtown area. These clarifications require additional changes to some general provisions of the ordinance.

Summary of Changes:

- Number of permits in the downtown area- Remove language that limits truck permits in the downtown area but maintain the limit of two in Biltmore Village. An individual would not be allowed to operate more than a single truck in either Biltmore Village or the downtown national register district area.

- Dining Areas- Allow dining areas and related furniture at a mobile food site if requirements of the NC State Building Code can be met including access to restroom facilities.

- Temporary Facilities- Temporary facilities will continue to be prohibited at the mobile food site including temporary restrooms.

After extensive review and a recommendation from the mobile food vending subcommittee, the proposed changes were reviewed at the May 10, 2013, meeting of the Downtown Commission. After this date additional changes were clarified with the mobile food vending subcommittee and the design review subcommittee and shared with the entire Commission. The Commission supports the proposed changes to the mobile food vending ordinance.

The Planning and Zoning Commission reviewed the amendments to the ordinance at their meeting on June 5, 2013. There was a question that mobile food vending may be working against stated goals of adding density in the downtown area. Further discussion provided a perspective that this ordinance provides the opportunity for dense business growth and development at a food truck lot. It was also noted that the activity may be temporary in nature since there is redevelopment potential for most surface parking lots in downtown and surface lots are where mobile food vending is operating. The Commission voted unanimously to endorse the amendment to the ordinance.

City staff concurs with that recommendation because the amendments are reasonable and consistent with the Comprehensive Plan and other adopted plans based on information presented in the staff report and as presented in the staff recommendation.

City staff recommends City Council approve the UDO amendment for changes to the Mobile Food Ordinance as outlined in the staff report and find that the amendments are reasonable and are consistent with the Comprehensive Plan and other adopted plans, based on information provided in the staff report and as stated in the staff recommendation

Mayor Bellamy opened the public hearing at 5:41 p.m., and when no one spoke, she closed the public hearing at 5:41 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Pelly found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4207. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 269**

**D. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CLARIFICATIONS TO AND MODIFICATIONS OF CURRENT SIGN REGULATIONS**

**ORDINANCE NO. 4208 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CLARIFICATIONS TO AND MODIFICATIONS OF CURRENT SIGN REGULATIONS**

Planning & Development Director Judy Daniel said that this is the consideration of an ordinance to amend the Unified Development Ordinance regarding clarifications to and modifications of current sign regulations. This public hearing was advertised on June 14 and 21, 2013.

Ms. Daniel said that over the past several months, the staff has determined that some adjustments to the sign regulations should be considered. These changes primarily allow more flexibility for businesses and developments from a practical perspective, without allowing a substantial increase in signage. They also reflect evolving community standards for certain types of signs. The rationale for each change is noted in the summary of changes below.

Summary of Changes

**Sec. 7-9-5(c)(1)(c):** Signage for Manufactured Housing Communities

The proposed modification is primarily a technical change to remove a requirement that seems duplicative. It would remove signage requirements from the manufactured housing community overlay section and instead refer back to the applicable language for subdivision and multi-family development signs in Article 13. The change is proposed because the requirement duplicates the requirements for other multi-family developments and it seems unnecessary for there to be a separate signage requirement for this use. The language change also simplifies some antiquated terminology.

**Sec. 7-13-2-b-1:** General sign requirements

The proposed change relates to general sign requirements, adding a provision requiring old sign structures to be removed before a new sign permit can be issued. This has sometimes been a problem in the past and this change will clarify intent.

**Sec. 7-13-4(b)(2)(j):** Menu boards for fast food restaurants

The proposed change reflects general acceptance of the use of two menu boards for many fast food restaurants. The Board of Adjustment has approved this provision several times and it is becoming an industry standard. The Planning Commission recommended a modification to the originally proposed language, clarifying that there may be no more than two menu boards per restaurant, and reducing the size allowed per menu board to reflect what seems to be the industry standard for these signs.

**Sec. 7-13-5(c):** Second Tier Signs

The change proposed would allow an expansion of the use of second tier signs for properties that have no direct access on a major public thoroughfare. The code already allows sharing a sign, and this change would allow an independent sign if the property with the thoroughfare frontage does not have a sign and is willing to allow the use.

**Sec. 7-13-8(b)(4):** Sign amortization

These changes would modify the city's amortization standards for recently annexed areas. The impetus for the change comes from a large commercial center opened just a year or so before it was annexed a few years ago. The current five year amortization created an understandable hardship for this business given the large size of its sign, and their only recourse would be to request relief from the Board of Adjustment. Further, the five year amortization requirement has long been a source of substantial concern to many annexed properties – commercial, residential, and institutional uses. A check of a range of other cities reveals that longer amortization periods are not unusual, and a special provision for properties recently annexed seems to be a fair consideration. This change also deletes language related to the city's ETJ.

Staff introduced these and other changes to the Planning and Zoning Commission at their June 5, 2013, meeting. The Commission supported some of these changes and requested staff to get additional information about others. The Commission requested additional research, examples, and clarification from staff on proposed changes to the standards for off-premise signs, residential development signs, and signage for multi-tenant businesses. Staff is presenting the changes that were supported by the Commission to Council as we believe Council might wish to consider them now. Staff will return with the remaining proposals and the recommendation from the Commission later this summer.

The Planning and Zoning Commission voted unanimously to recommend approval of the ordinance changes presented and city staff concurs with that recommendation.

Staff recommends City Council approve the UDO amendment for changes to the Sign Regulations as outlined in the staff report and find that the amendments are reasonable and are consistent with the Comprehensive Plan and other adopted plans, based on information provided in the staff report and as stated in the staff recommendation.

Mayor Bellamy opened the public hearing at 5:47 p.m., and when no one spoke, she closed the public hearing at 5:47 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hunt found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4208, with the minor amendment to the ordinance outlined by Ms. Daniel. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 271**

**E. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CLARIFICATION TO AND MODIFICATIONS OF REGULATORY STANDARDS FOR INDUSTRIAL USES**

**ORDINANCE NO. 4209 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CLARIFICATIONS TO AND MODIFICATIONS OF REGULATORY STANDARDS FOR INDUSTRIAL USES**

Planning & Development Director Judy Daniel said that this is the consideration of an ordinance to amend the Unified Development Ordinance regarding clarifications to and modifications of regulatory standards for industrial uses. This public hearing was advertised on June 14 and 21, 2013.

The proposed amendments pertain to development regulations and review processes for industrial uses. The impetus for these proposed changes came from recent questions regarding development of a potential industrial site. The proposals would modify the review thresholds for projects in the Industrial and Commercial Industrial districts.

**Review Process for Industrial Uses** - The language of the current regulations (found in Article 5) that govern site plans for industrial uses are confusing. The code currently states that a Level II site plan review is required for industrial uses "*with a gross floor area of 100,000 sf to an industrial development containing more than 15 acres*". Yet there are no provisions in the Level III site plan standards for industrial uses with gross floor areas of over 100,000 square feet.

Upon reflection the staff has come to believe that these standards need further refinement as well as clarification. They affect several zoning districts with substantially different characters including Industrial, Commercial Industrial, Light Industrial, and River.

**Summary of Changes**

**Sec. 7-5-9**: Review Processes for Industrial Uses - The proposed changes separate the processes for site plan review of industrial uses in the Industrial district from the review of these uses in the Commercial Industrial and River districts, and clarify the standards for both.

**Level III Reviews** - The proposed changes to Sec. 7-5-9(a)(1)a(1) first make a technical change for consistency of wording with the same section in the Level II reviews, stating the section purpose and application. The second and more substantive change adds a provision requiring Level III review for very large industrial projects (over 100,000 sf) when they are located in the Commercial Industrial or River districts. Staff proposes this change since there are many types of uses allowed in those districts in the City, and we felt the Council might wish to review large industrial uses proposed in the vicinity of those commercial or residential uses.

**Level II Reviews** - The proposed changes to Sec. 7-5-9(b)(1)(a)(1) amend the Level II site plan review process to remove what we believe to be an unnecessary acreage threshold and clarify that Level II review will be the final approval step for industrial uses of 100,000 square feet or more in the Industrial district. The modification also establishes that a Level II review will be the final approval step for industrial uses in the Commercial Industrial and River districts for projects of 50,000 to 100,000 square feet. Any industrial projects below these thresholds would remain a Level I review.

The staff report to the Planning and Zoning Commission at their June 5, 2013, meeting included the process modifications outlined above and a proposal for changes to the Open Space standards affecting industrial uses in the Industrial and Commercial Industrial districts. Those changes would reduce the requirement in the Commercial Industrial district (from 15% to 5%) and eliminate the requirement in the Industrial district. The Commission supported both these proposed changes in theory, and recommended approval of the process change requirements.

The Commission deferred final consideration of the open space changes, and requested additional input from the SACEE Committee regarding the potential for incentives for reduction of open space requirements. The Commission recommended approval of the proposed review thresholds unanimously.

City staff and the Planning and Zoning Commission recommend City Council adopt an ordinance incorporating the changes to the City Code of Ordinances as outlined in the staff report.

City staff recommends City Council approve the UDO amendment for changes to the regulatory review processes for industrial uses as outlined in the staff report and find that the amendments are reasonable and are consistent with the Comprehensive Plan and other adopted

plans, based on information provided in the staff report and as stated in the staff recommendation.

Mayor Bellamy opened the public hearing at 5:50 p.m., and when no one spoke, she closed the public hearing at 5:50 p.m.

At Mayor Bellamy's request, it was the consensus of Council to ask Planning & Development Department to look at possible revisions to the overall parking standards, in particular the parking standards as they regulate to industrial uses.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hunt found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4209. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 273**

**V. UNFINISHED BUSINESS:**

**A. ORDINANCE NO. 4210 - ORDINANCE ADOPTING THE FISCAL YEAR 2013-14 ANNUAL OPERATING BUDGET**

Mayor Bellamy said that the public hearing on the budget was held on June 11, 2013.

Deputy City Manager Jeff Richardson said that this report presents the Fiscal Year 2013/2014 Annual Budget for adoption by City Council.

The Fiscal 2013/2014 Proposed Annual Operating Budget was presented to City Council on May 28, 2013. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Proposed Budget along with a notice of the Public Hearing was published on May 31 and June 7, 2013. City Council conducted a public hearing on the Proposed Budget on June 11, 2013. The Fiscal Year 2013/2014 Proposed Budget that was presented on May 28 was balanced with a revenue-neutral Ad Valorem tax rate of $0.43 per $100 of assessed value. The General Fund budget also included no appropriation from the City's fund balance. All essential City services are continued in the Budget.

***Balancing the General Fund Operating Budget – Revised Revenue Estimates***

The Proposed Budget assumed that a Regional Cultural and Recreation Authority (CRA) would be created, and that the City would join the CRA in January 2014. On June 18th, House Bill 418, which authorized the formation of the CRA, was amended to include language that excluded municipalities from joining the CRA for 24 months after its enactment, which means that the City will not join the CRA in January. As discussed with City Council at the June 11th public hearing, if the City, for whatever reason, did not join the CRA in January, then a $1.5 million General Fund budget gap would exist in FY 2013/2014. Staff indicated to Council on June 11th that a property tax rate increase may be necessary to overcome this $1.5 million budget gap.

Since the June 11th meeting, staff has also received updated information that indicates that the tax reform legislation being considered by the North Carolina General Assembly will not have an impact on the City's FY 2013/2014 General Fund budget. Earlier in the spring, staff was concerned that the negative financial impact in FY 2013/2014 could be as much as $1.0 million, and thus built this assumption into the FY 2013/2014 Proposed Budget. Staff now feels confident that this $1.0 million in revenue can be budgeted in the General Fund in FY 2013/2014. It should

be noted, however, that the impact of tax reform will continue to be a significant issue for cities to monitor in future years. Estimates recently released by the North Carolina League of Municipalities indicate that the City of Asheville may lose up to $1.3 million in revenue in FY 2014/2015 from state tax reform legislation, and that this loss may grow to $2.4 million by FY 2018/2019.

In addition to the $1.0 million revenue adjustment associated with the updated tax reform plan, staff also has received revised revenue estimates for several other General Fund revenues, most notably motor vehicle licenses. Based on these updated revenue projections, staff is submitting to Council a balanced General Fund operating budget that: 1) reflects a full year of continued City operation of its Parks and Recreation facilities and programs; and 2) does not include a property tax rate increase above the revenue neutral rate of 43 cents per $100 of assessed value or a fund balance appropriation. It should be noted that the FY 2013/2014 Parks and Recreation Department budget does still include plans to restructure the City's role in producing special events and festivals, and that plan assumes that the City will produce its last Bele Chere festival in summer 2013.

***Enhanced Capital Improvement Program***

Executive Director of Public Works and Multimodal Transportation Cathy Ball said that as staff indicated at the May 28 Proposed Budget presentation and at the June 11 public hearing, the Proposed Budget recommended that a portion of the savings from the City's participation in the CRA be redirected to the City's Capital Improvement Program (CIP) beginning in FY 2014/2015. Specifically, staff recommended in the Proposed Budget that $1.1 million in CRA-produced savings (equivalent to 1-cent on the property tax rate) be added to the city's regular CIP; and that $2.2 million in CRA-produced savings (2-cents on the tax rate) be directed to the City's new comprehensive Community and Economic Development CIP (EDCIP). The Economic Development and Community Investment strategy, as envisioned in the EDCIP, focuses on putting more money into job creation, infrastructure and other capital projects in targeted areas where tax base growth is most promising. Tax base growth in these target areas would then help fund additional improvements that leverage private investment and economic growth.

With the City's participation in the CRA now no longer an option in FY 2013-14, staff is recommending that City Council increase property taxes by 3 cents above revenue neutral, to $0.46 per $100 of assessed value, to fund the enhanced capital improvement program. The 1-cent or $1.1 million that will be added to the City's regular CIP will fund an additional $5.5 million in deferred maintenance projects over the next five years. This additional funding will provide for greater investment in both street improvements and facility maintenance. With this additional funding, the City will be able to improve its street resurfacing schedule from the current cycle of once every 65 years to once every 35 years (20 years is the benchmark recommended cycle).

The additional 2-cents or $2.2 million for the EDCIP (along with proceeds from land sales) will provide the initial seed money to leverage a potential $59 million in capital investments over the next five years. Staff recommends launching this program by issuing debt in FY 2013/2014 to begin such cornerstone projects as the River Arts District Transportation Improvement Project (RADTIP), multi-modal and pedestrian improvement projects, transformational affordable housing developments, and enhanced funding for critical capital maintenance like street and sidewalk repairs. Many of the transformational projects proposed in the EDCIP could have been eligible for the 5% funding from the Sullivan Act that was repealed by the General Assembly earlier this year in HB 252.

This action complies with the Fiscal Responsibility focus area of City Council's Strategic Operation Plan: Operate the City of Asheville's organization to the highest levels of fiscal responsibility.

Pros:

- Ensures City's compliance with North Carolina General Statutes that require local governments to adopt a balanced budget ordinance by July 1 of each year.
- General Fund operating Budget is balanced with no property tax rate increase or fund balance appropriation and all essential City services are continued.
- Includes funding for enhanced five-year Capital Improvement Program.

Cons:

- A revenue shortfall could occur in FY 2013/2014 if the N.C. General Assembly alters the current tax reform proposal prior to its final adoption.
- Based on the current financial forecast, the EDCIP may require additional resources in FY 2017/2018.

As noted above, the Proposed FY 2013/2014 General Fund budget is balanced with no property tax rate increase for operations and no fund balance appropriation. The Budget does include a 3-cent property tax rate increase to enhance the City's five-year Capital Improvement Program. The chart below shows the impact of the 3-cent increase for various property values. For example, the owner of a $250,000 home will see an annual increase of $100.

| | | 3 Cents | |
|---|---|---|---|
| Home Value | Current Bill | Revised Bill | $ Increase |
| 150,000 | $630 | $690 | $60 |
| 250,000 | $1,050 | $1,150 | $100 |
| 350,000 | $1,470 | $1,610 | $140 |

If Council approves the Budget as currently proposed by staff, the adopted General Fund budget for FY 2013/2014 will be $95,861,764. The table below highlights the changes between the May 28 Proposed Budget and the Budget that staff is recommending tonight.

| | Proposed Budget |
|---|---|
| General Fund Budget from May 28 | 90,512,514 |
| Expense Adjustments: | |
| Restore Parks & Recreation Expense Budget to full year | 3,049,250 |
| Reduce Contingency | (1,000,000) |
| Increase Contribution to Regular CIP & EDCIP | 3,300,000 |
| Net Expenditure Changes | 5,349,250 |
| Revenue Adjustments: | |
| Restore Parks & Recreation Revenue Budget to full year | 549,250 |
| Budget State Tax Funds | 1,000,000 |
| Adjusted Revenue Estimates (e.g. motor vehicle tax) | 500,000 |
| 3-Cent Property Tax Rate Increase | 3,300,000 |
| Net Revenue Changes | 5,349,250 |
| **General Fund Budget June 25** | **95,861,764** |

Staff requests that Council review the FY 2013/2014 Annual Budget, including the changes noted above, and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance, which will establish an Ad Valorem tax rate of $0.46 per $100 of assessed value.

Councilman Hunt was appreciative of the 5-year view of the CIP. He felt the tax increase sets the stage for us to strategically plan and accomplish some very important projects going forward. He did note that even though we are calling it the EDCIP, it is actually a community & economic development CIP.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hunt moved for the adoption of Ordinance No. 4210, which establishes an ad valorem tax rate of $0.46 per $100 assessed value. This motion was seconded by Councilman Bothwell.

When Councilman Smith noted that there is still a lot of financial uncertainty at the state level, City Attorney Oast said that City Council can always amend their budget throughout the fiscal year; however, they cannot change the tax rate, which must be set by June 30. Councilman Smith noted that if the City gets hit with another unplanned financial hit from the State, City Council can shift the funds from the 3-cents for the CIP maintenance and EDCIP for a buffer in what may happen.

Councilman Smith asked if we make the investments in the River Arts District and in the South Slope, will the revenue growth be able to match the expenditure growth. Ms. Ball said that we would not expect to see revenues until 3-4 years out. Through those years, we will continue to watch our expenditures and look for opportunities to find other ways for service delivery, etc., but at the 5-7 year period we expect there will be money available to pay back debt service for this community & economic development CIP, as well as have additional funding for our maintenance needs as well.

Councilman Bothwell explained the tax structure for the CRA, if the legislature passes that bill. He noted that even though we are getting more efficient vehicles, the fuel costs have doubled over the past 10 years. He supported staff's recommendation as we will be building for the future.

Ms. Ball responded to Councilman Pelly regarding the contribution to the Asheville Art Museum. She said that the Asheville Art Museum is a City-owned building. While they are doing major renovations, the City is proposing to contribute $2 Million which will be debt financed. That is directly tied back to the cost of some major building maintenance requirements, such as the HVAC system. The total projected cost for the total improvements is roughly $22 Million.

Vice-Mayor Manheimer highlighted that the budget includes an increase in pay for City staff in order to keep the salaries competitive. This budget takes the first major step towards self-sustainability, which is going to be our reality going forward. We have identified different areas to shore up the City, but if you can't count on the cooperation of the legislature in doing that, we are limited in our options. This budget recognizes that if we invest in the infrastructure in our own community, it will pay dividends so that we can continue to grow our own revenue base to sustain our own community in a way that we will enjoy. This budget is a sound budget that attempts to leverage what we have to assure our fiscal sustainability going forward

Councilman Davis agreed with Vice-Mayor Manheimer in our need to become self-sustained. He was amazed that we have not had a tax increase in years.

Councilman Smith felt that this budget doesn't reduce our service levels, but let's up catch up on some deferred maintenance. The community & economic development CIP is about the future and becoming a more dependent and resilient city.

Mayor Bellamy recalled asking Council not to approve the Business Improvement District because she felt sure we would have to consider a tax increase. Council was able to weather tough times through the years without a tax increase because we kept a healthy fund balance. Just in one week alone, the City had several job announcements. This year is a new dynamic - where we don't have a state government that is willing to work with us. She believed that our regional assets should be paid by the regional users and to be cut out of the CRA "just because" is not good public policy. She will vote for the 4-cent tax increase, however, she would have preferred it be a 3-cent increase (1 for revenue neutral; 1 for CIP maintenance; and 1 for community & economic development CIP). She is concerned that the 5-year CIP may not happen because of the fractured relationship at the state level. She was concerned that we may be using the CIP funds just to do basic operational services. She would support the increase because (1) we have cut down our savings to the bare minimum of what is Council's policy; (2) there has been no increase in many years; (3) the investments that we make are really needed; and (4) the investments we make will provide an increased tax base for our community that will ensure that people who live in our community can also work in our community.

The motion made by Councilman Hunt and seconded by Councilman Bothwell and carried unanimously.

Mr. Ken Michalove, former member of the Pack Place Board, provided Council with the following overview of his concerns (1) City allocating $2 Million to the Asheville Art Museum renovations; City proceeding with separating the lease between the City and Pack Place Education Arts & Science Center into two leases - one for Pack Place and one for the Art Museum; City agreeing to physically separate the Pack Place building into two buildings; issues of having two leases and building separation issues have created an atmosphere of distrust towards the Art Museum among Pack Place Board members; there is limited information available about the Art Museum project and their day to day operations; there is the potential of destroying the Pack Place as an institution; and, there has been limited opportunity for public input and information sharing regarding all of these issues.

Mr. Adrian Vassallo, President of the Asheville Downtown Association, said there is a recognition that downtown is vibrant and that it continues to need attention from our City leaders. The downtown is also recognized for its impact on the City. A top issue the Association has every year for downtown is cleanliness and safety. Those are basic City services. He questioned the $30 Million investment in the River and a less than $2 Million investment in downtown. He said this is not about the River, but about recognition of the impact that investment can have in downtown. If we can get a 3,000% return on the south slope vs. a 2,000% return on the river, we should be spending more in downtown. In the coming fiscal year, this budget allocates nothing for recycling and trash cans in downtown. He encouraged Council to look at ways to allocate funding to some of those services that are needed in downtown.

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**Closed Session**

At 7:09 p.m., Councilman Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: State of North Carolina, City of Asheville; and Metropolitan Sewerage District. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); (2) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee, and to hear or investigate a

complaint, charge, or grievance against an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(1); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 7:54 p.m., Vice-Mayor Manheimer moved to recess the closed motion to return to the formal meeting, noting that the closed session would continue at the end of the formal meeting. This motion was seconded by Councilman Bothwell and carried unanimously.

**B. RESOLUTION NO. 13-144 - RESOLUTION ADOPTING A LIVING WAGE FOR FULL- AND PART-TIME CITY EMPLOYEES AND GENERAL SERVICE CONTRACTS $30,000 AND ABOVE**

Administrative Services Manager Brenda Mills said that the purpose of this staff report is to provide an update on the Living Wage Policy and recommended action for the Fiscal Year 2013-14 which is (1) Set the living wage rate at $11.85/hour without employer provided health insurance and $10.35/hour with employer provided health insurance; and (2) Increase the contract threshold for General Services subject to the living wage at $30,000 and above with no limits.

The City of Asheville's Living Wage Policy is considered annually as part of the budget process. Over the last two years, the City Council has adopted a living wage for full- and part-time employees while incrementally applying the requirement to general service contracts within specific dollar thresholds. Those actions included:

- In April 2011, City Council approved a resolution setting a living wage for City of Asheville full, part-time, and contract employees working on general service contracts $30,000-$90,000 in value. The resolution set the living wage for Fiscal Year 2011-2012 at $11.35/hour without employer provided health insurance and $9.85/hour with employer provided health insurance.

- In March 2012, City Council approved a resolution setting a living wage for City of Asheville full, part-time, and contract employees working on general service contracts $30,000-$200,000 in value. The living wage remained the same as in the previous year.

For FY 2013-2014, City Council is being asked to consider (1) increasing the living wage rate based on a defined formula and (2) extending the living wage requirement to all general service contracts, including those with a value above $200,000. The living wage does not apply to volunteers, to full-time or part-time students who are working for the city in positions designed to further the students' education, or to temporary/seasonal employees as this type of employment is typically secondary to the employee.

**(1) Living Wage Rate**

Just Economics recommends that the City of Asheville calculate the living wage rate using the "Universal Living Wage Formula." This Universal Living Wage formula is based on the premise that for an individual the cost of housing should make up thirty percent or less of his or her income. The formula takes the Fair Market Rent for a one bedroom apartment in the local area (as determined by HUD) at the fortieth percentile and divides that by .3 to determine monthly income; monthly income is then multiplied by 12 months and divided by 2080, the annual number of working hours for a full-time employee (assuming a 40 hour work week, 52 weeks a year); the number is then rounded to the

nearest nickel. A worker may be paid an amount equal to $1.50 less than the living wage rate if the employer provides for 50% or more of the cost of an employees' healthcare coverage.

It is recommended that the City of Asheville adjust the wage rate annually by using a four year average of the Fair Market Rent at the fortieth percentile, so as to mitigate any volatile changes in the Fair Market Rent. If the change in the living wage rate is 3% or greater from the current living wage, the wage rate will be adjusted.

Based on this recommended formula, the living wage rate for Fiscal Year 2013-2014 would be $11.85/hour without employer provided health insurance and $10.35/hour with employer provided health insurance, representing a 4% increase over the previous two years.

**(1) Living Wage application to General Service Contracts**

General services contract information is collected and reviewed each quarter for living wage review and compliance. Data collected since July 2012 shows the following impact of the living wage policy on the city's general services contracts:

- Total of 100 general services contracts were let through March 1, 2013
- Number of general services contracts by dollar thresholds:
  - Between $30,000 and under $90,000 (15 total) – 9 were subject to living wage and vendor complied with living wage requirements per the City's current policy.
  - Between $90,000 and under $200,000 (2 total) – Only 1 contract in this threshold would have been subject to living wage with the current policy including contracts up to $200,000.
  - Over $200,000 (3 total) – Only one contract in this threshold would have been subject to living wage if the current policy had included contracts above $200,000.

For the data above, contracts not subject to the living wage would have been those that did not include a labor services (i.e., software licensing purchases, Interlocal agreements, etc.). For the most part, contracts executed in the $90,000-$200,000 and above range included services where living wage rates are already paid (audit services, Development Services software implementation, IT infrastructure maintenance, radio infrastructure maintenance, etc.).

**Employee Costs:** Increasing the living wage to 11.85/hour without employer provided health insurance and $10.35/hour with employer provided health insurance for city employees would have a nominal impact on costs associated with future salaries and benefits (less than a fraction of 1 percent). The most significant change the City would implement is with newly hired firefighters, who currently make less than $10.35 an hour during their first six months ("Step A" in the step plan) after rookie school. If adopted, the City would move these firefighters to $10.35 an hour ("Step B" in the step plan) directly after rookie school. If the City had made this change with the last class of 25 newly hired firefighters, the cost impact would have been approximately $7,500 in base salary.

**Contract Costs:** Data from contracting in the current fiscal year shows that when the City contracted for services above $200,000, the vendor typically already paid a living wage. Based on the City's current year performance, the impact of adjusting the General Services contract threshold from $30,000 and above with no limit will have limited financial impact. However, if the City executes large contracts for labor intensive services (i.e., security services, landscaping and mowing services), there may be a more significant impact, possibly ranging from 10-30%.

Staff recommends adoption of a Living Wage resolution that:

(1) Sets the living wage rate at $11.85/hour without employer provided health insurance and $10.35/hour with employer provided health insurance;
(2) Increases the contract threshold for General Services subject to the living wage at $30,000 and above with no limits;
(3) Directs staff to continue to monitor the impact of an adjustment with data provided to City Council as part of the quarterly financial reports, and;
(4) Brings the policy back to City Council for official review as part of the FY 14-15 budget process to look at impact and make recommendations for adjustment to the wage level.

When Councilman Bothwell asked why the policy doesn't include construction contracts, Ms. Mills said that construction and procurement contracts have specific General Statutes that govern award of them.

Councilman Smith hoped that other employers will strive to adopt a living wage policy also.

The following individuals spoke in support of the resolution and thanked City Council for being a leader:

Ms. Vicki Meath, Executive Director, Just Economics WNC
Ms. Lottie Myers, Member of the original Steering Committee for Living Wage
Mr. James Sheeler
Mr. Mark Hebbard, Living Wage Certification Program Coordinator for Just Economics WNC (provided Council with a list of businesses with living wage policy)
Mr. Timothy Sadler
Rev. Amy Cantrell

Mr. Alan Ditmore was concerned of the implication that the living wage can be used as a substitute for housing affordability.

Councilman Smith moved for the adoption of Resolution No. 13-144. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 367**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 13-145 - RESOLUTION AMENDING THE 2012-13 CONSOLIDATED ANNUAL CDBG AND HOME ACTION PLAN FOR THE RESIDENCES AT GLEN ROCK HOME PROJECT**

Community Development Director Jeff Staudinger said that this is the consideration of a resolution amending the 2012-2013 Consolidated Annual CDBG and HOME Action Plan to provide the balance of the cancelled East Riverside HOME project to the Residences at Glen Rock HOME project.

In 2008, Mountain Housing Opportunities (MHO) was awarded $264,734 in HOME funds for the development of an 80-unit condominium development in the East of the Riverway neighborhood. The proposed project was never completed; however, $229,595 was expended in pre-development, and the balance of the award was returned to the Consortium for reallocation.

In 2011 and 2012, MHO brought forward Housing Trust Fund and HOME requests for the Residences at Glen Rock, a 22 units affordable housing development created through the rehabilitation of the old Glen Rock Hotel on Depot Street in the City's River Arts District. To date,

the City has approved a total of $387;000 in Housing Trust Funds and $140,000 of HOME funding to the project. Granting this request to place the $35,139 balance from the East Riverside project into this project would make the total HOME investment in the Residences at Glen Rock $175,139. The HOME commitment of 11 units (affordable to households earning less than 60% of median income) which was required in the East Riverside project will be fulfilled in the Glen Rock Hotel. An additional 11 units affordable to households earning less than 80% of median income will also be created. MHO made this request to offset higher than expected construction costs.

The Asheville Regional Housing Consortium considered this request in January of 2013, and supported this request.

The proposed use of funds would grant federal funds already allocated to the City. No City general funds are affected.

The Asheville Regional Housing Consortium recommends that the 2012-2013 Action Plan be amended to allocate the $35,139 of HOME funds originally allocated to the East Riverside project to the Residences at Glen Rock.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Manheimer moved for the adoption of Resolution No. 13-145. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 368**

**B. ORDINANCE NO. 4211 - ORDINANCE AMENDING THE FEES & CHARGES MANUAL TO REDUCE FEES FOR SUMMER PROGRAMS**

Parks, Recreation & Cultural Arts Director Roderick Simmons said that at Mayor Bellamy's request, he provided the following summary of the fee structure and cost recovery of the program cost for summer and afterschool.

The current summer camp fee is $40 per week for the first child + $10 weekly registration fee, $30 per week for each additional sibling + $10 weekly registration fee. The summer program is a 10 week program.

Last summer, we served 341 program participants. The cost to provide the program was $120,000 and we had revenue of $21,000. We subsidize the program in the amount of $98,000. This equates to $289.16 per participant.

If all projected fees were collected per participant the total realized revenue would have been $136,000 for the 10 week program.

Mr. Roderick said that in Fiscal Year (FY) 2013-14, the Fees & Charges Manual has been amended that if a family is on a reduced or free lunch program they will receive the program at a discounted rate. For the current Fiscal Year (2012-13), City Council adopted the Fees & Charges Manual with no fee waiver or scholarship program. He asked Council for policy direction to waive the fees for the current summer program which started on June 17.

Vice-Mayor Manheimer clarified that if a child qualifies for a free or reduced lunch during the regular school year, they would receive summer camp for free. Mr. Simmons said that in FY 2013-14 the fee is going up to $50/week for the first child. If the child qualifies for free or reduced

lunch, it will be $30/week for the first child. The summer camp program runs from 8:00 a.m. - 5:30 p.m.

When Councilman Hunt felt there needs to be written documentation for reduced fees kept on file at the City, Mr. Simmons said that the parents have to fill out a form with the school system that allows them to have a free or reduced lunch. Currently we don't have a scholarship program in place, but that documentation will be required for next FY 2013-14.

In response to Vice-Mayor Manheimer, Mr. Simmons said that parents can register at anytime and they may not register for the full 4-week or full 5-week session. Parents can sign up on a week by week basis. If there is a fee reduction for this fiscal year, staff would let the parents know of that reduction prior to the next week's registration. It was noted that some parents may be required to pay a fee if they do not qualify for the reduced or free luncheon, unless Council waives the fees.

In response to Councilman Davis, Mr. Simmons said there are approximately 123 children at our sites. Last year they served approximately 341 children. An assumption of the drop is because the City is now charging for the program with no waivers or scholarship program.

Councilman Hunt moved to amend the Fees & Charges Manual for the current Fiscal Year (2012-13) as follows: fees for families that qualify for free and reduced lunches be $25.00 per week for the first child + $10 weekly registration fee, effective Fiscal Year 2012-13; and for Fiscal Year 2013-14 fees for families that qualify for free and reduced lunches be $35.00 per week for the first child + $10 weekly registration fee.

Mayor Bellamy questioned the $15 reduction and felt it would be more appropriate to let staff determine the reduction, taking into account the income of the families that use our programs. She pointed out that a free lunch is different than a child with a reduced lunch.

Councilman Hunt moved to amend his motion to amend the Fees & Charges Manual for the current Fiscal Year (2012-13) as follows: (1) fees for families that qualify for reduced lunches be $30.00 per week for the first child + $10 weekly registration fee, effective Fiscal Year 2012-13; and for Fiscal Year 2013-14 fees for families that qualify for reduced lunches be $40.00 per week for the first child + $10 weekly registration fee; and (2) fees for families that qualify for free lunches be $20.00 per week for the first child + $10 weekly registration fee, effective Fiscal Year 2012-13; and for Fiscal Year 2013-14 fees for families that qualify for free lunches be $30.00 per week for the first child + $10 weekly registration fee. This motion was seconded by Councilman Bothwell.

At Vice-Mayor Manheimer's suggestion, it was the consensus of Council to have the Finance Committee review the summer program fees, service delivery systems, performance measures, comparable rates and best practices in other cities.

Mayor Bellamy felt we need to look at the income of the families who actually use our system and on average it's the lowest of the lowest income people in our community. We need to make sure that kids are safe in the summer and have the ability to use the facilities that their parents are paying for.

Councilman Smith asked that in the future we would see some outcome measures around these programs and what we are doing around the achievement gap.

Mr. Alan Ditmore felt that large scale child care funding needs to go hand in hand with contraception funding.

Mr. Timothy Sadler hoped that long-term the City's goal should be to get local organic food to children in their programs.

With a friendly amendment by Councilman Smith, Councilman Hunt moved to amend his motion for the current Fiscal Year 2012-13, based on documented evidence provided by parents and presented to City staff (which will be retained centrally and verified by the City staff) (1) children of families that qualify for free lunch be waived for the first child + $10 registration fee (per week); and (2) children of families that qualify for reduced lunch be $20 per week for the first child + $10 registration fee (per week). This amended motion was agreed to by Councilman Bothwell and carried unanimously.

Mayor Bellamy asked Mr. Simmons to provide a report to Council on the income levels associated with eligibility for free and reduced rate school lunches.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

**ORDINANCE BOOK NO. 28 – PAGE 282**

**RESOLUTION NO. 13-146 - RESOLUTION APPOINTING A MEMBER AND CHAIR TO THE CIVIL SERVICE BOARD**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Civil Service Board. In addition, City Council must appoint a Chair annually.

The terms of Mr. Larry Harris (current Chair) and Ms. Jacquelyn Hallum expire on May 21, 2013.

The following individuals have applied for the vacancy: Carolyn Worthington, Elizabeth Franks and Lynn Moffa.

On June 11, 2013, City Council instructed the City Clerk to arrange interviews for Ms. Worthington, Ms. Franks and Ms. Moffa.

After Council spoke highly of the candidates, Carolyn Worthington received 7 votes; Elizabeth Franks received 2 votes, and Lynn Moffa received 5 votes. Therefore, Carolyn Worthington and Lynn Moffa were appointed as members of the Civil Service Board to each serve a two year term respectively, terms to expire May 21, 2015, or until their successor s have been appointed.

Councilman Hunt moved to appoint Marvin Rosen as Chair to the Civil Service Board to serve at the pleasure of Council. This motion was seconded by Councilman Bothwell and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 369**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Due to the claims of Lt. William Wilke, Mr. Timothy Sadler felt that the public's trust has been betrayed by the Chief of Police Anderson and encouraged him to resign.

At the suggestion of Councilman Smith, City Manager Jackson explained the process underway for the claims made by Lt. William Wilke concerning the handing of Chad Anderson's investigation. In summary, an internal administrative investigation is underway and he expects said report to be received in 30-45 days; however, findings of his report will not be made public.

Administrative reviews look at facts and findings to determine if policies and procedures were followed. Information related to an administrative review, including any action taken related to the findings of the review, is part of an individual's personnel file. NCGS 160A-168 denies public access to most items in a public employee's personnel file with some exceptions. He stressed that every aspect will be looked at and thoroughly reviewed to see if any policies were violated.

Mayor Bellamy said that if anything was inappropriately handled, there are two avenues of investigations - internal process and the District Attorney investigation (both of which are ongoing). The City has over 200 sworn individuals who protect and serve the City of Asheville, and was disappointed about some of the blanket statements made about the entire Police Department. She has not lost her trust in the Police Department. She wished that the results of the administrative internal investigation could be seen by the public so the public's trust will be restored. She stressed that City Council has no control over the District Attorney.

**Lawsuit**

The City was served with a Complaint on or about May 31, 2013, which is generally described as follows; James L. Smith vs. William Hogan, et al. Complaint involves police brutality and conspiracy to violate Plaintiff's civil rights. This matter will be handled by an attorney outside the City Attorney's Office.

**Closed Session**

At 9:06 p.m., Mayor Bellamy announced Council would go back into closed session to continue discussion of the items previously announced.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 9:52 p.m.

Magdalen Bowleson
CITY CLERK

MAYOR

Tuesday – July 2, 2013- 5:00 p.m.
Council Chamber - 2nd Floor, City Hall

Special Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; City Manager Gary W. Jackson; and City Clerk Magdalen Burleson

Absent: Councilman Marc W. Hunt (planned vacation); Councilman Christopher A. Pelly (planned vacation); and Councilman Gordon D. Smith (prior conflict)

Mayor Bellamy opened the special meeting at 5:00 p.m. She said that the purpose of this special meeting is to announce the interim City Attorney.

Councilman Bothwell moved to appoint Ms. Martha Walker-McGlohon as Interim City Attorney. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

After Council spoke highly of Ms. Walker-McGlohon, Mayor Bellamy administered Ms. Walker-McGlohon the oath of office.

**Closed Session**

At 5:05 p.m., Councilman Davis moved to go into closed session for the following reason: To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee, and to hear or investigate a complaint, charge, or grievance against an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 5:20 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilman Bothwell and carried unanimously.

At 5:20 p.m., Mayor Bellamy adjourned the meeting.

Magdalen Burleson
City Clerk

Mayor

Tuesday – July 5, 2013 – 2:00 p.m.

**SPECIAL MEETING**

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; City Manager Gary W. Jackson; Interim City Attorney Martha Walker McGlohon; and City Clerk Magdalen Burleson

Absent: Councilman Marc W. Hunt; Councilman Christopher A. Pelly; and Councilman Gordon D. Smith

Mayor Bellamy announced that this special meeting is to consider a matter relating to an employee of the City of Asheville. After closed session, she said that the meeting would adjourn in the open meeting.

**Closed Session**

At 2:00 p.m., Councilman Davis moved to go into closed session (1) to receive an update on the investigation of a complaint, charge, or grievance against an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); (2) to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(1); and (3) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved. The statutory authorization is contained in G.S. 143-318.11 (a) (3). This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

At 4:00 p.m., Vice-Mayor Manheimer moved to come out of closed session and return to the formal meeting. This motion was seconded by Councilman Bothwell and carried unanimously.

**Adjournment**

At 4:00 p.m. Mayor Bellamy adjourned the meeting.

CITY CLERK

MAYOR

Tuesday – July 11, 2013 – 9:00 a.m.

**SPECIAL MEETING**

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell (arrived at 9:10 a.m.); Councilman Jan B. Davis; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; Interim City Attorney Martha Walker McGlohon; and City Clerk Magdalen Burleson

Absent: Councilman Marc W. Hunt (planned vacation)

Mayor Bellamy announced that this special meeting is to consider a matter relating to an employee of the City of Asheville. After closed session, she said that the meeting would adjourn in the open meeting. It is also anticipated that at the meeting, Council may take action by adoption of a resolution under 160A-168 (c) (7).

**Closed Session**

At 9:00 a.m., Councilman Pelly moved to go into closed session (1) to receive a final report on the investigation of a complaint, charge, or grievance against an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); (2) to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(1); and (3) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved. The statutory authorization is contained in G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Smith and carried unanimously.

At 9:51 a.m., Councilman Bothwell moved to come out of closed session and return to the formal meeting. This motion was seconded by Councilman Davis and carried unanimously.

Interim City Attorney Martha McGlohon said that on June 25, 2013, Lt. William Wilke held a press conference concerning allegations of an incident involving Police Chief William Anderson's son that occurred on March 9, 2013. As a result of those allegations, Lt. Wilke filed two grievances with the City Manager's Office. The City Manager then asked City staff to conduct an internal investigation. City staff interviewed at least 7 individuals and invested over 20 hours of the investigation. The investigation is now complete and in closed session City Council was updated on the results of that investigation. All personnel information of a City employee is considered confidential unless there is an exception. There is a statute that allows City Council, upon a written determination by the City Manager that releases certain personnel information is essential to the public confidence in a city service that would allow City Council to release limited personnel information. The City Manager has asked City Council to concur with his determination that certain information from the final investigation be allowed to be released so as to ensure the public confidence is maintained in an essential city service - the Police Department. A resolution has been prepared for City Council consideration with an Exhibit "A" which is the City Manager's written determination.

**RESOLUTION NO. 13-147 - RESOLUTION CONCURRING IN THE CITY MANAGER'S RELEASE OF PERSONNEL INFORMATION**

Vice-Mayor Manheimer read the following resolution and moved for the adoption of Resolution No. 13-147 concurring in the City Manager's release of personnel information. This motion was seconded by Councilman Bothwell. Said resolution reads: WHEREAS, a Lieutenant with the Asheville Police Department held a press conference on June 25, 2013, wherein he alleged that he felt coerced by his superiors to "submit to a set of facts and circumstances that were clearly false and misleading"; and WHEREAS, the Lieutenant also alleged that that statements from his superiors were not in an investigative file; and WHEREAS, the City Manager has conducted a thorough administrative investigation into the allegations made by the Lieutenant, and the City Manager has determined that the

release of certain information covered by N.C.G.S. 160A-168, the Personnel Privacy Act, is essential to maintaining public confidence in the administration of City Services, as set forth in Exhibit A, attached hereto; NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: Pursuant to N.C.G.S. 160A-168 (c) (7), the Asheville City Council hereby concurs with the City Manager's release of certain personnel information contained in Exhibit A, attached hereto; and, to the extent of any prior release of such information, ratifies and concurs in said release.

When Mayor Bellamy asked if any member of the public would like to comment, no one spoke.

The motion made by Vice-Mayor Manheimer and seconded by Councilman Bothwell carried unanimously.

Mayor Bellamy then read the following Exhibit "A" which is the statement of the City of Asheville regarding allegations of coercion, cover-up, management and employment related concerns within the Asheville Police Department:

"The Asheville City Council ("City Council") takes tremendous pride in the men and women of the Asheville Police Department (Department). They are a group of highly trained professionals and dedicated public servants, reporting for duty around the clock, frequently risking their lives in service to this community. On Tuesday, June 25, 2013, a Lieutenant with the Department held a press conference wherein he alleged that he felt coerced by Chief William Anderson and Captain Stony Gonce to "submit to a set of facts and circumstances regarding the accident involving his (the chief's) son that were clearly false and misleading." The Lieutenant went on to allege that statements from Chief Anderson and Captain Gonce regarding the accident were not in the investigative file. The Lieutenant also stated that the City Manager and Deputy City Manager failed to act on his June 17 and June 24 complaints. The City Manager, as the City's chief administrator in charge of directing and supervising the administration of all City departments and making all employment related decisions, has conducted a thorough investigation into the Lieutenant's allegations.

In accordance with the advice from the Interim City Attorney, the City Council is satisfied that: (1) any and all allegations made by the Lieutenant regarding the SBI interview or missing documents from the SBI file are criminal matters, regarding which the City defers to the judgment of the Buncombe County District Attorney; and (2) that any and all allegations made by the Lieutenant regarding specific employees is confidential personnel information within the meaning of NCGS §160A-168 and may not be disclosed except as allowed by law. Additionally, the City Manager has satisfied the City Council that: (1) the Lieutenant 's grievances were handled timely and in accordance with City Personnel Policies; and (2) that as it pertains to the Lieutenant's allegations of general operational and administrative concerns within the Department, an action plan has been developed to work towards moving the Department forward. The City Manager will share an overview of this plan.

As expressed by the City Manager, there is concern about the accuracy and completeness of the information included in the Lieutenant's public statement on June 25, 2013. More specifically, the City Manager has indicated that the absence of a detailed response from the City to the specific allegations made by the Lieutenant during the June 25, 2013, press conference will force the citizens of Asheville to accept the statements made by the Lieutenant, as representative of the manner in which the City manages its employees and provides essential City services. Based upon the foregoing, the City Manager has concluded, and the City Council concurs, that disclosure of certain personnel information surrounding the administrative investigation into the written allegations made by the Lieutenant, in accordance with NCGS §160A-168(c)(7), is essential to maintaining public confidence in City services, in particular the services provided by the Police Department. Due to the constraints of said statute, the City is not able to release a more detailed response; however, the following account should provide those citizens that have expressed concern about the allegations made by the Lieutenant at the June 25, 2013, press conference, and others, a more accurate depiction.

Between June 27, 2013, and July 9, 2013, City staff invested over twenty (20) hours, interviewing a number of City employees including but not limited to Lieutenant William Wilke, Chief Anderson and Captain Gonce. The following limited findings of fact were derived from the interviews:

1. On March 14, 2013, did Chief Anderson and Captain Gonce attempt to manipulate or coerce Lieutenant William Wilke to "submit to a set of facts and circumstances regarding the accident involving Chief Anderson's son that were clearly false and misleading?"

**FINDINGS:** No. Additionally, the City Manager concurs with the District Attorney's determination that no criminal laws were violated in the course of the investigation of the accident.

2. On March 14, 2013, when the Chief of Police ordered Lieutenant Wilke to his office, did the Chief of Police violate any City or Departmental policies or procedures?

**FINDINGS:** While there are no City or Department policies or procedures that address this issue, the conduct was not appropriate, and this issue has been addressed with Chief Anderson by his supervisor.

The City acknowledges that the administrative investigation revealed that there are concerns within the Department regarding general management practices, some of which commenced prior to the March 9, 2013, incident. Subsequent events following the March 9, 2013, incident exacerbated those concerns. In closing, the City takes very seriously its obligations to comply with the personnel privacy laws. Therefore, the City must refrain from disclosing additional information pertaining to the administrative investigation. It is hoped that the foregoing information will give the citizens of Asheville, who have expressed concerns about the allegations made by the Lieutenant at the June 25, 2013, press conference, sufficient information to make a more informed opinion regarding the same, thereby causing the public to maintain confidence in the City's administration of City services, particularly those services provided by the Police Department."

City Manager Jackson said that the goal of his report is to (1) address concerns of public confidence in City services by sharing findings and conclusions, within the limitations of the law, of the administrative investigation regarding allegations of coercion, cover-up, management and employment related concerns with the Asheville Police Department; (2) outline the timeline of events involving the City's response to the grievance; and (3) assure City Council and the general public that management fully supports the men and women of the Asheville Police Department and plans are in place to move the department forward.

Allegation that Chief William Anderson and Captain Stony Gonce attempted to manipulate or coerce Lt. William Wilke to "submit to a set of facts and circumstances regarding the accident involving Chief Anderson's son that were clearly false and misleading." Statements from Chief Anderson and Captain Gonce regarding the accident were not in the investigative file. Findings (1) any and all allegations made by the Lieutenant regarding the SBI interview or missing documents from the SBI file are criminal matters, regarding which the City defers to the judgment of the Buncombe County District Attorney; and (2) While there are no City or Department policies or procedures that address the Chief of Police's action of ordering Lt. Wilke to his office on March 14, the conduct was not appropriate, and this issue has been addressed with Chief Anderson by his supervisor.

Allegation that of operational and administrative concerns pertaining to specific employees. Findings: Allegations made by the Lieutenant regarding specific employees is confidential personnel information within the meaning of NCGS 160A-168 and may not be disclosed except as allowed by law.

Allegation of general operations and administrative concerns within the Department. Findings: Organizational performance is guided by Council's Strategic Operating Plan and accompanying department business plans which contain specific goals for department management to achieve. In light of the findings of the administrative investigation, we will task Command Staff, supported by outside expertise, to review and modify goals accordingly. An overview of the plan will be made public.

In summary, between June 27, 2013, and July 9, 2013, City staff invested over 20 hours interviewing a number of City employees including but not limited to Lieutenant William Wilke, Chief Anderson and Captain Gonce. The information shared today, in accordance with NCGS 160A-168 (c) (7) is essential to maintaining public confidence in City services, in particular the services provided by the Police Department. Due to the constraints of this statute, the release of personnel records is limited. Aggressive and effective steps are being taken to address the operational and administrative concerns within the Department with a focus on unity, cohesion and integrity. Changes originating with new or long standing department leadership invariably result in organizational stress and conflicts. New department director appointments, new operational emphasis and priorities, reallocation of resources, staff reassignments, and greater accountability for performance may all add stress to the relationships between supervisors and the employees whose work they are responsible for managing. Additionally, budget and fiscal challenges, cost saving strategies and reengineering, as well as economic and legislative trends can all compound the friction between employees and supervisors. These effects are common during periods of change in both public and private organizations and are not unique to APD. City management is committed to providing the resources to better equip employees with the tools to manage the change that is needed to succeed as an organization.

In closing, City management has complete confidence in the Police Department's ability to move forward. This is staff's best effort to closely examine all facts made available at this time. All staff members are strongly encouraged to share information with their supervisors and/or other leadership, including the City Manager, when concerns arise about operational and administrative decisions.

City Manager Jackson then provided a brief report card of the major recent Asheville Police Department accomplishments, which included a decrease in crime; Public Housing Unit; Downtown Unit; Partnerships - Changing Together; and Building Relationships with Youth.

**RESOLUTION BOOK NO. 35 - PAGE 370**

**Adjournment**

At 10:22 a.m. Mayor Bellamy adjourned the meeting.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – July 23, 2013- 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; Interim City Attorney Martha Walker-McGlohon; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Pelly gave the invocation.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON JUNE 25, 2013; AND THE SPECIAL MEETINGS HELD ON JULY 2, 2013, JULY 5, 2013, AND JULY 11, 2013**

**B. ORDINANCE NO. 4212 - ORDINANCE TO ENACT THROUGH TRUCK PROHIBITIONS ALONG A SECTION OF EAST CHESTNUT STREET, CHATHAM ROAD, RUMBOUGH PLACE, SALOLA STREET, MOUNT CLARE AVENUE, AND A SECTION OF COLEMAN AVENUE**

Summary: The consideration of an ordinance to enact a through truck prohibition on the following city-maintained streets:

- East Chestnut Street, from SR 1781 (Broadway) to a point 325 feet west of US 25 (Merrimon Avenue).
- Chatham Road, from Edgewood Road to US 25 (Merrimon Avenue).
- Rumbough Place, from US 19-23 (Patton Avenue) to Salola Street.
- Salola Street, from Rumbough Place to SR 3412 (Sand Hill Road).
- Mount Clare Avenue, from SR 1781 (Broadway) to Coleman Avenue.
- Coleman Avenue, from Mount Clare Avenue to a point 200 feet west of US 25 (Merrimon Avenue).

The Traffic Engineering Division has conducted traffic-engineering studies along the subject streets and has determined that the streets are not appropriate for through truck traffic.

City Ordinances 19-60 and 19-61 prohibit trucks from using residential and designated streets as listed in Appendix C of the Code of Ordinances. For purposes of these ordinances, a truck is defined as a vehicle that has any of the following characteristics; a gross vehicle weight rating of 10,000 pounds or more, a tandem or tri-axle, or a tractor or tandem vehicle when pulling semi-trailers or tandem semi-trailers. There are certain exceptions to the ordinances including points of destination on the specific street (exclusive means/route), authorized detour route, emergency vehicles, public utility vehicles, wreckers (when towing), and buses.

The initial cost to install the appropriate truck prohibition signs is about $1,800 and is included in the current operating budget for the Transportation Department.

City staff recommends that City Council approve an ordinance to enact through truck prohibitions along a section of East Chestnut Street, Chatham Road, Rumbough Place, Salola Street, Mount Clare Avenue, and a section of Coleman Avenue.

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**C. ORDINANCE NO. 4205 - SECOND AND FINAL READING OF AN ORDINANCE AMENDING THE FRANCHISE TO OPERATE A TROLLEY BIKE TOUR SERVICE (PUB CYCLE) WITHIN THE CITY OF ASHEVILLE IN ORDER TO EXTEND THE FRANCHISE ONE YEAR FROM THE DATE OF BUSINESS COMMENCEMENT**

**ORDINANCE BOOK NO. 28 - PAGE 259**

**D. RESOLUTION NO. 13-148 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES FROM JULY 1, 2013 TO JUNE 30, 2014**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Asheville Humane Society (AHS) for animal shelter services within the territorial limits of the City of Asheville.

The City of Asheville has contracted with the Asheville Humane Society (AHS) since 2002 for the care and shelter of impounded animals. The Asheville Humane Society is contracted by Buncombe County to operate the animal shelter and provide care and maintenance of the animals.

The cost for the animal shelter services to the City of Asheville for FY 2012-2013 was $19,167 per month for a FY year total of $230,004. The FY 2013-2014 cost reflects no change or increases to last years' service and the $230,004 is already included in the Asheville Police Department's 2013 - 2014 budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Asheville Humane Society for Animal Shelter Services for the term of July 1, 2013, through June 30, 2014.

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**E. RESOLUTION NO. 13-149 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PINNACLE LANDSCAPE LLC TO PROVIDE VARIOUS GROUNDS MAINTENANCE SERVICES AT PACK SQUARE PARK**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Pinnacle Landscape, LCC to provide various grounds maintenance services at Pack Square Park in the amount of $115,795 for a twelve (12) month period with an option for two (2), twelve (12) month renewals based on contractor performance.

On October 22, 2012, the Parks, Recreation & Cultural Arts Department issued an Advertisement for Bids for grounds maintenance services at Pack Square Park. Pinnacle Landscape, LCC was lowest responsive and responsible bidder for a total of $115,795. The bid

included unit prices for landscaping and irrigation repair services, which will be billed under separate invoice on an as-needed basis.

The grounds maintenance contract will extend until June 30, 2014 with the option for two (2), twelve (12) month renewals based on contractor performance.

This action complies with the City Council Strategic Operating Plan in that it supports Park Maintenance operations at the highest levels of fiscal responsibility as well as enhances a basic city service. It also complies with the Parks, Recreation & Cultural Arts Master Plan in that it provides ongoing maintenance and care for the City's park system.

Pros: • Supports the efficient delivery of core park maintenance services.

Con: • None

The $115,795 to support the Pack Square Park grounds maintenance contract and is budgeted in the FY 2013-2014 Parks, Recreation & Cultural Arts Department operating budget as part of the Pack Square Park budget. The Pack Square Park annual operating budget is $260,000. The City and Buncombe County share the operating cost for Pack Square Park. The County's annual contribution is $127,000, a percentage of which goes toward the grounds maintenance contract and the remainder to other park operating cost.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Pinnacle Landscape, LCC to provide various grounds maintenance services at Pack Square Park in the amount of $115,795 for a twelve (12) month period with an option for two (2), twelve (12) month renewals based on contractor performance.

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**F. RESOLUTION NO. 13-150 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH W.K. DICKSON & CO INC. FOR ENGINEERING SERVICES ASSOCIATED WITH HORIZON HILL WATERLINE IMPROVEMENT PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a professional services agreement with W. K. Dickson & Co., Inc. for engineering services in the amount of $205,350.00 for the Horizon Hill Waterline Improvement Project.

The City of Asheville Water Resources Department has prioritized this Neighborhood Waterline Replacement Project for the current fiscal year and is seeking engineering design and project management assistance with this project. This project will replace existing substandard and failing waterlines in favor of new waterlines, designed and constructed in accordance with the City of Asheville standards. The Water Resources Department issued a Request for Qualifications (RFQ) for Engineering Services related to the design and contract administration of the Horizon Hill Waterline Improvement Project. In response to the RFQ, the department received twelve (12) proposals. Companies responding were:

1. Brooks Engineering Associates - Asheville, NC
2. Brown Consultants, PA - Asheville, NC
3. GAI Consultants, Inc. - Charlotte, NC
4. Lamm Engineering Associates, PLLC – Raleigh, NC
5. Mattern & Craig, Inc. - Asheville, NC
6. McGill Associates - Asheville, NC
7. Michael Baker Engineering, Inc. - Asheville, NC
8. The Wooton Company - Raleigh, NC
9. Vaughn & Melton Consulting Engineers - Asheville, NC

10. Weston and Sampson - Charleston, SC
11. Willis Engineers - Charlotte, NC
12. W. K. Dickson & Co., Inc. - Charlotte, NC

A review team, comprised of staff from the City of Asheville Water Resources Department, reviewed these proposals and selected the firm of W. K. Dickson & Co., Inc. Subsequent to this selection, Water Resources staff met with W. K. Dickson & Co., Inc. and has negotiated an Engineering Services Contract in the amount of $205,350.00.

The funding needed for this agreement is already allocated within the Horizon Hill Waterline Replacement Project in the Water Resources Capital Improvement Projects fund.

City staff recommends City Council approval of a resolution authorizing the City Manager to execute a professional services agreement with W. K. Dickson & Co., Inc. for engineering services in the amount of $205,350.00 for the Horizon Hill Waterline Improvement Project.

**RESOLUTION BOOK NO. 35 - PAGE 376**

**G. RESOLUTION NO. 13-151 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER WITH PATTON CONSTRUCTION GROUP LLC FOR THE HAW CREEK AREA AND RIDDLE ROAD WATERLINE REPLACEMENT**

**ORDINANCE NO. 4213 - BUDGET AMENDMENT FOR THE HAW CREEK AREA AND RIDDLE ROAD WATERLINE REPLACEMENT**

Summary: The consideration of a resolution authorizing the City Manager to execute a change order in the amount of $95,468.50 to increase the construction contract for Patton Construction Group, LLC, from a total in the amount of $1,006,269.00 to $1,101,737.50 for the Haw Creek Area and Riddle Road Waterline Replacement; and a budget amendment in the amount of $95,469.00 from savings in other capital projects that were completed under budget.

On July 24, 2012, City Council awarded the construction contract to Patton Construction Group, LLC, for the Haw Creek Area and Riddle Road Waterline Replacement. The project consists of the construction and installation of approximately 3,200 linear feet of 8-inch ductile iron pipe and 6,130 linear feet of 6-inch ductile iron pipe with all associated valves, hydrants, and services to provide fire protection and domestic water service to the Haw Creek area and Riddle Road area.

In order to complete the construction and close out the project, a change order is needed to increase the contract amount by an additional $$95,468.50 for a total contract amount of $1,101,737.50. The change order is needed because of overruns to the original quantities estimated, changes to the scope of the work, and the addition of large areas of pavement resurfacing. The asphalt resurfacing that was added is made up of areas that were scheduled to be paved by City of Asheville Public Works Department and Metropolitan Sewage District. It was included in this project to eliminate the need for the other agencies to produce separate contracts, coordinate the work and produce savings based on scales of efficiencies. The cost for the additional asphalt resurfacing will be recouped through established agreements with the other agencies once the project is complete. The changes to the project were requested through work change directives issued by the Water Resources Department.

The Water Resources Department will initially fund the full construction cost of $1,101,737.50 (includes the change order amount) for this project until completion when reimbursement will be received from the City of Asheville Public Works Department and Metropolitan Sewage District for additional road resurfacing work. The funds of $95,468.50 for the change order will be transferred from the General Projects capital project that accumulates

remaining funds from all of Water Resources completed, inactive capital projects. In order to use the funds in General Projects, a budget amendment is necessary.

Cost summary until reimbursement:

| | |
|---|---|
| Original Construction Amount | $1,006,269.00 |
| Change Order Amount | $ 95,468.50 |
| Total Amount for Project After Change Order | **$1,101,737.50** |

The amount remaining in General Projects will be reallocated to other capital projects as the need arises. Staff will seek Council approval on any future reallocation of these funds.

City staff recommends City Council approval of the resolution authorizing the City Manager to execute a change order in the amount of $95,468.50 to increase the construction contract for Patton Construction Group, LLC, from a total in the amount of $1,006,269.00 to $1,101,737.50 for the Haw Creek Area and Riddle Road Waterline Replacement; and a budget amendment in the amount of $95,469.00 from savings in other capital projects that were completed under budget.

**RESOLUTION BOOK NO. 35 - PAGE 377**
**ORDINANCE BOOK NO. 28 - PAGE 285**

**H. RESOLUTION NO. 13-152 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MUNICIPAL UTILITY AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE RELOCATION AND ADJUSTMENT OF MUNICIPALLY OWNED WATERLINES WITHIN THE I-26 / NC 280 AIRPORT ROAD INTERCHANGE PROJECT AREA WATERLINE RELOCATION WORK ASSOCIATED WITH THE I-26/AIRPORT ROAD ROADWAY CONSTRUCTION PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a Municipal Utility Agreement with NCDOT for the relocation and adjustment of municipally owned waterlines within the I-26 / NC 280 (Airport Road) interchange project area; the maximum estimate for the relocation and adjustment of the waterlines is $164,000.

The NCDOT is constructing highway improvements at the I-26 / NC 280 interchange as part of NCDOT project I-5501, in Buncombe County. The City of Asheville owns and maintains municipal waterlines within the right-of-way of the project area. As a condition of the installation, operation and maintenance of said waterlines within the NCDOT right-of-way; the City of Asheville Water Resources Department is responsible for 100% of the cost associated with adjustment or relocation of said waterlines should the need arise. NCDOT project I-5501 creates that need. For the purpose of construction coordination and efficiencies the City of Asheville Water Resources Department wishes to enter into this Municipal Utility Agreement with NCDOT, which allows the waterline utility work to be performed as part of the NCDOT's construction contract. It is estimated that the total cost of the relocation and adjustment of municipally owned waterlines for this project will not exceed $164,000.

The funding needed for this agreement is currently allocated within the NCDOT I-26 Widening Project in the Water Resources Capital Improvement Projects fund.

City staff recommends City Council approval of a resolution authorizing the City Manager to execute a Municipal Utility Agreement with NCDOT for the relocation and adjustment of municipally owned waterlines within the I-26 / NC 280 (Airport Road) interchange project area; the maximum estimate for the relocation and adjustment of the waterlines is $164,000.

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**I. RESOLUTION NO. 13-153 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO TWO AGREEMENTS WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE STATE MATCH TO PURCHASE TWO DIESEL BUSES USING THE CURRENT CONTRACT WITH GILLIG INC.**

Summary: The consideration of a resolution authorizing the City Manager to enter into two agreements with the N.C. Dept. of Transportation (NCDOT) in the amount of $40,000 each, as State matches for the purchase of two diesel buses using the current contract with Gillig, Inc.

During June and August 2012, the City of Asheville received funding from the Federal Transit Administration under the Bus and Bus Facilities, Livability Program, and the State of Good Repair to purchase two 30-foot buses to replace the last two remaining 1996 buses. The City allocated its share of the required 20% local match for both buses, an amount totaling $160,000. The City was recently informed that the North Carolina Department of Transportation (NCDOT) will fund 10% of the cost of the bus purchases, which will save the City $80,000. Because the buses are funded with different grants, the NCDOT has produced two agreements, one for each.

The City has order one of the buses and is in the process of ordering the second one under the current contract with Gillig, LLC. The delivery date will be 12 months for both of them.

The cost for purchasing the two buses is approximately $800,000. 80% will be funded by the FTA, 10% or $80,000 funded by the City and 10% or $80,000 by the NCDOT. With NCDOT now providing 10% of the funding, the City will save $80,000 in funds that were previously budgeted for these bus purchases. Staff recommends that half of this savings ($40,000) remain in the Transit Capital Projects Fund and be used for City matches for future Transit capital investments, and that the remaining $40,000 be returned to the General Fund and held in contingency pending current year budget performance.

Staff recommends City Council to authorize the City Manager to enter into two agreements with the NCDOT in the amount of $40,000 each, as State match to purchase two diesel buses using the current contract with Gillig, Inc.

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**J. RESOLUTION NO. 13-154 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH NEXTBUS INC. TO INSTALL AN AUTOMATED VEHICLE LOCATION SYSTEM AND PROVIDE REAL-TIME PASSENGER INFORMATION TO TRANSIT USERS AND EXCEPTION TO BID ANY ITEMS QUOTED IN THE REQUEST FOR PROPOSALS**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with NextBus, Inc. to install an Automated Vehicle Location system and provide Real-time Passenger Information to transit users and exception to bid any items quoted in the Request for Proposals.

The City applied for the N.C. Dept. of Transportation's Urban Technology Grant and was awarded $405,000 to acquire an Automated Vehicle Location (AVL) system with focus in the Real Time Passenger Information feature. The AVL system produces operational information in real time, which includes vehicle location, speed, fuel usage, on-time performance, and historical records. This information is a powerful tool to help manage the system and to identify areas needing improvement. It also enhances the customer experience by providing next bus arrival information in real time, via personal cell phones, Smartphones and through the transit system's website. This project has been identified in the Transit Master Plan as a vital project to help improve the system's operation.

The City issued a Request for Proposals (RFP) on March 19, 2013, and it closed on April 22, 2013. Three proposals were received from the following firms:

- Digital Recorders Inc., a division of Clever Device Ltd. - Durham, NC
- RouteMatch Software - Atlanta, GA
- NextBus Inc. - Emeryville, CA

The proposals were evaluated by a committee that included staff from the IT, and Transportation Departments and overseen by North Carolina State University, Institute of Transportation Research and Education (NCSU/ITRE) and the City's Purchasing Office.

The firms were evaluated based on their qualifications and experience, statement of work, proposal response and cost.

After careful review and consideration of all the evaluation factors and the information provided, the committee recommends NextBus, Inc. to install its Automated Vehicle Location system.

The initial cost to install the basic system, including operations for five years will be $352,206. The additional cost of installing LED signs at selected bus stops with this funding source will be up to $97,794. NCDOT is funding 90% of this project in the amount of $405,000, the remaining 10% ($45,000) are City's responsibility.

This contract will be valid for five years, giving other transit systems in the area the possibility to piggy back and acquire the same AVL system. It will also give the city the ability to leverage additional funds to install LED signs at important bus stops.

The total anticipated project cost is $450,000. The City is required to provide a 10% local match in the amount of $45,000, which is already budgeted in the Transit Capital Project Fund.

City staff recommends City Council to adopt a resolution authorizing the City Manager to enter into a contract with NextBus, Inc. to install an Automated Vehicle Location system and provide Real-time Passenger Information to transit users and exception to bid any items quoted in the RFP.

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**K. RESOLUTION NO. 13-155 - RESOLUTION APPROVING THE REALLOCATION OF EMERGENCY SOLUTIONS GRANT FUNDS TO HOMEWARD BOUND OF WESTERN NORTH CAROLINA AND STAFF SUPPORT FOR THE HOMELESS INITIATIVE**

Summary: The consideration of a resolution for the re-allocation of existing Emergency Solutions Grant funds in the amount of $25,000 to Homeward Bound of Western North Carolina for Rapid Rehousing activities and $10,000 for staff support for the homeless initiative.

When the original allocations of ESG funds were made earlier this year, the Homeless Initiative Advisory Committee (HIAC) recommended and City Council approved $35,000 be allocated to offset HMIS costs for community agencies. Since that recommendation, the HUD Continuum of Care Competition resulted in an application for an HMIS project that would cover HMIS fees. We expect to receive those funds in that competition. Therefore, the $35,000 originally allocated for that purpose needs to be reallocated to other uses.

The HIAC sent a Request for Proposals via the Homeless Coalition for eligible agencies to apply for $25,000 of these funds for Rapid Rehousing activities. Homeward Bound of Western

North Carolina was the only applicant. The Housing and Community Development Committee recommends the following for the $35,000 balance of funds:

1) $25,000 to Homeward Bound of Western North Carolina for Rapid Rehousing activities
2) $10,000 to the City of Asheville for HMIS staff support for the Homeless Initiative

The State ESG program agrees that these are eligible uses for these funds.

The proposed activity is a reallocation of funds already awarded. The purpose for which the funds were originally allocated will be met through a different funding source.

City staff recommends City Council accept the Housing and Community Development Committee recommendation for drawing down the $35,000 balance of Emergency Solutions Grant funds.

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**L. RESOLUTION NO. 13-157 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY, THE CITY OF HENDERSONVILLE, AND CUSTOMER INSPIRED SERVICES, LLC, FOR THE JOB ACCESS AND RESERVE COMMUTE AND NEW FREEDOM GRANTS**

**ORDINANCE NO. 4214 - BUDGET AMENDMENT FOR THE NEW FREEDOM PROJECTS**

Summary: The consideration of (1) a resolution authorizing the City Manager to enter into an agreement with Buncombe County, the City of Hendersonville and Customer Inspired Services, LLC, (sub-recipients of Job Access and Reverse Commute and New Freedom grants); and (2) a budget amendment in the amount of $75,398 from federal grant funds and sub-recipient matches to increase the project budgets for the New Freedom Federal grants.

The City of Asheville is the designated recipient of the Job Access and Reverse Commute (JARC) and New Freedom grant funds, which are programs of the Federal Transit Administration (FTA). JARC is a formula grant program oriented to provide job access in the urbanized and suburbanized area. The formula is based on the number of eligible low-income and welfare recipients in these areas.

The job access refers to projects relating to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment.

The reverse commute refers to a public transportation project designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities.

The projects to be funded include: pedestrian improvements along US 64 in Henderson County, which is the City of Hendersonville's project; van purchasing and rehabilitation, which is for Customer Inspired Services, and the City of Asheville's administrative costs for both projects.

New Freedom is also a FTA formula grant program for new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990. These funds are intended to assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.

To be eligible, the programs require an intensive planning process and the development of a Coordinated Public Transportation and Human Services Transportation Plan or CTP-HSTP based on community participation. The CTP-HSTP was developed in conjunction with the French Broad Metropolitan Planning Organization, Buncombe, Henderson and Haywood Counties, human services agencies, public and private transportation providers, the North Carolina Department of Transportation and the general public to assess current transportation needs, identify gaps and to set goals. The plan was approved on March 29, 2012 by the French Broad River MPO's governing body (the Transportation Advisory Committee), which includes elected representatives from each of the eighteen local governments which make up the MPO. The CTP-HSTP set the rules to apply for projects and the projects were selected in a competitive process that was approved by the TAC.

In September 2012, Buncombe County's Mountain Mobility, the City of Hendersonville and Customer Inspired services were selected as sub-recipients of the JARC grant and NF grant. The projects are listed as follows:

| Sub-Recipient | Project | Program | Amount funded | Sub-Recipient's match |
|---|---|---|---|---|
| Buncombe County | Black Mountain Trailblazer | JARC | $102,181 | $102,181 |
| City of Asheville | Program Administration | JARC | $22,706 | N/A |
| City of Hendersonville | Pedestrian improvements along US 64 | NF | $197,116 | $37,000 |
| Customer Inspired Services | Van purchasing and rehab | NF | $18,700 | $2,300 |
| Customer Inspired Services | Operations | NF | $2,000 | $2,000 |
| City of Asheville | Program Administration | NF | $24,201 | N/A |

The City set up project budgets in February 2013, but there was an oversight to authorize the City Manager to sign the sub-recipient agreements. The resolution seeks to remediate this.

In addition, the projects under the New Freedom grant have been increased by the MPO, due to additional funding availability; funding has been allocated to the NF projects as shown in the table below. The city will pass through the funds and will seek reimbursement directly from the FTA. The sub-recipients will be responsible for the match.

| Sub-Recipient | Project | Program | Amount funded | Sub-Recipient's match |
|---|---|---|---|---|
| City of Hendersonville | Pedestrian improvements along US 64 | NF | $239,918 | $59,980 |
| Customer Inspired Services | Van purchasing and rehab | NF | $21,000 | $5,250 |
| City of Asheville | Program Administration | NF | $28,567 | N/A |

The City will be responsible for the Program Management and, as designated recipient, to oversee the use of the funds according to FTA regulations. The program management will require the use of city resources, mainly staff. As a designated recipient the city will use $28,567

NF funds, for administration purposes, which will cover the program management expenses for a period of two years.

This program is fully funded with federal grant funds; there is no impact to the City's General Fund budget.

Staff recommends that City Council: 1) authorize the City Manager to enter into an agreement with each one of the sub-recipients of the Job Access and Reverse Commute and New Freedom grants; and 2) adopt a budget ordinance amendment in the amount of $75,398 from federal grant funds and sub-recipient matches to increase the project budgets for the New Freedom Federal grants.

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**M. RESOLUTION NO. 13-158 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A UNIT PRICE CONTRACT WITH PATTON CONSTRUCTION GROUP INC. FOR THE OVERLOOK ROAD SIDEWALK PROJECT**

**ORDINANCE NO. 4215 - BUDGET AMENDMENT FOR THE OVERLOOK ROAD SIDEWALK PROJECT**

Summary: The consideration of: 1) a resolution authorizing the City Manager to execute a unit price contract not to exceed the amount of $324,715 with Patton Construction Group, Inc., along with a 17% contingency fund to cover any change orders up to the total contract amount of $380,000 for the Overlook Road Sidewalk Construction Project; and 2) a technical project budget amendment in the amount of $380,000 from previously budgeted fee-in-lieu of sidewalk monies and general fund pay-as-you-go capital funds.

The reason for installing this sidewalk is that it is an identified needed linkage in the City of Asheville's adopted Pedestrian Plan. It will provide a safe pedestrian thoroughfare between three schools, two churches and a public library.

Portions of this work take place in the North Carolina Department of Transportation's Right-of-Way. An encroachment agreement was obtained from that agency on September 6, 2012. Along with the encroachment agreement, several temporary and permanent easements were required to be obtained from adjacent property owners.

The project generally consists of installing new ADA compliant sidewalks, curb and gutter, storm drainage structures, milling and resurfacing a portion of the North bound lane of Overlook Road along with associated items.

An informal request for bids was issued on May 2, 2013. There were no proposal's received on the due date of May 16, 2013. Invitations for bids were sent out again on May 17, 2013, one bid from a local contractor was received on May 23, 2013. Their price exceeded the estimate for this project by 65%. Pursuant to reviewing the bid, staff began negotiations with the Contractor but was unable to come to a mutual agreement.

Another informal request for bids was issued on June 19, 2013, with two bid proposals being received on July 9, 2013. The low bidder being a local contractor, Patton Construction Group, Inc., with an amount of $324,715.00.

Funding for the design work on the Overlook Road sidewalk project was included in the City's FY 2011-12 Capital Improvement Program. As noted above, funding was included for construction in the FY 2012-13 Capital Improvement Program. In order to consolidate the two

years' of funding for this contract into one capital project, staff is recommending that City Council adopt a technical project budget amendment in the amount of $380,000.

Staff recommends City Council to: 1) authorize the City Manager to execute a unit price contract with Patton Construction Group, inc., in the amount of $324,715 along with a contingency amount of 17% to cover any changes or unexpected occurrences, bringing the total contracted amount to $380,000 for the Overlook Road Sidewalk Construction Project; and 2) adopt a technical project budget amendment in the amount of $380,000 from fee-in-lieu of sidewalk monies and previously budgeted general fund pay-as-you-go capital funds.

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**N. RESOLUTION NO. 13-159 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY TO CONTINUE ADMINISTRATIVE COORDINATION OF CHANGING TOGETHER**

**ORDINANCE NO. 4216 - BUDGET AMENDMENT FOR CHANGING TOGETHER COMMUNITY PROJECT**

Summary: The consideration of: 1) a resolution authorizing the City Manager to execute on behalf of the City of Asheville an agreement with Buncombe County in which the City will act, for a third year, as the coordinating agency for the Changing Together community project aimed at reducing violence through strategic prevention, intervention and suppression; and 2) a technical budget amendment in the amount of $79,955 to establish a project budget for this program in the City's Grant Fund.

Changing Together is a comprehensive and collaborative community project with participation from law enforcement, the District Attorney's Office and numerous non-profit and social service agencies throughout Asheville and Buncombe County. It was formed to address the issue of violence and chosen by the Governor's Crime Commission (GCC) as a Tier 1 site for implementation of the Focused Deterrence Model (High Point Model) in fiscal year 2009.

On September 13, 2011, and again on June 26, 2012, Council adopted a resolution authorizing the City Manager to enter into an agreement with Buncombe County to have the City oversee the administrative coordination of Changing Together. Since that time, the initiative has continued to address violent crime through the focused deterrence model.

During the last fiscal year, Changing Together facilitated 3 call-ins in which 44 of the 69 notified violent offenders (64%) heard a message from law enforcement and community members that their violent actions will no longer be tolerated. Representatives from local, state and federal enforcement agencies clearly outlined the coordinated information-sharing network created to ensure that notified offenders who continue to commit violent acts receive the most severe sentencing under the law. Community members described the impact of violence on families and neighbors, reminding notified offenders that, if they choose to change their violent behavior, they will find support from the community.

Notified offenders are also made aware of the services and resources available through Changing Together, including assistance with job searches, housing options and life skills classes. Of the 44 offenders who attended these call-ins, 30 stayed after to discuss requested services. To date, 16 (24%) Notified offenders have contacted Changing Together, and 11 (16%) are currently receiving assistance and support through Changing Together from staff, service providers, and community members.

Currently, the Buncombe County receives grant funding from the Governor's Crime Commission to coordinate direct services for call-in participants age 16 and older. Funding pays for the coordination of Changing Together, which includes a salary for the program director, project assistant and one resource counselor. For fiscal year 2013-14, the grant is $79,955.

The County is requesting the City continue responsibility for administrative coordination of Changing Together. One factor prompting the request is that the Governor's Crime Commission emphasized a preference for the coordination to be located in a municipality because of the stability it provides due to organizational capacity and infrastructure. The Buncombe County District Attorney's Office and the Buncombe County Sheriff's Office continue to be supportive of this restructuring of program coordination responsibilities. If the city manager is granted the authority to execute the agreement, the community relations division of the city manager's office will again oversee the Changing Together Program Director and Project Assistant positions.

With the revenue received from the County, the City will continue administrative coordination of the program director and project assistant positions. As a multi-agency grant partner, the city will contribute $10,000 for on-the-ground resource coordinator services. Funding for this program was included as part of the community relations approved FY 2013-14 General Fund budget. The technical budget amendment will move the budget from the General Fund to the Grant Fund.

Staff recommends City Council adopt: 1) the resolution authorizing the City Manager to execute, on behalf of the City of Asheville, the agreement with Buncombe County to continue administrative coordination of Changing Together; and 2) a technical budget amendment in the amount of $79,955 to establish a project budget for this program in the City's Grant Fund.

**RESOLUTION BOOK NO. 35 - PAGE 387**
**ORDINANCE BOOK NO. 28 - PAGE 291**

**O. RESOLUTION NO. 13-160 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. HISTORIC PRESERVATION OFFICE TO DEVELOP THE ASHEVILLE BUNCOMBE PRESERVATION PLAN**

**ORDINANCE NO. 4217 - BUDGET AMENDMENT FROM A FEDERAL PASS THROUGH GRANT FROM THE NATIONAL PARK SERVICE HISTORIC PRESERVATION FUND**

Summary: The consideration of a (1) resolution authorizing the City manager to enter into an agreement to accept a federal pass though grant from the National Park Service Historic Preservation Fund via the North Carolina State Historic Preservation Office; and (2) a budget amendment in the amount of $28,000 for the development of the Asheville Buncombe Preservation.

This budget amendment will be to accept a $15,000 federal pass though grant from the National Park Service Historic Preservation Fund via the North Carolina State Historic Preservation Office and to dedicate local matching funds of $2,300 raised by the Historic Resources Commission (HRC) through book sales of Cabins & Castles; $1,000 contributed by Mountain Housing Opportunities as stipulated in the Memorandum of Agreement for Eagle Market Place; and private donations raised by the HRC with assistance from the Preservation Society in the amount of $9,700 for a total budget of $28,000 for the development of the Asheville Buncombe Preservation.

As with many communities across the country, historic preservation in Asheville is at a crossroads. Originally established in 1979, the Historic Resource Commission of Asheville and Buncombe County has operated successfully as a joint body for the past 35 years and now oversees four local historic districts and 47 local landmarks. The HRC is also proud of the 15

National Register Districts and many more properties individually listed on the National Register, located within its jurisdiction.

The Asheville downtown area has experienced a renaissance and continues to be a thriving tourist destination. Its popularity and preservation has been fueled, in part, through the success of the Rehabilitation Tax Credit Program. The number of successful tax credit projects is an indicator of the local desire to protect and reuse historic buildings and of the essential role that historic building rehabilitation has played in Asheville's revitalization.

However, there are new challenges. The popularity of downtown has led to redevelopment efforts that have resulted in the demolition of structures significant to the downtown historic district. Although the Downtown Master Plan, adopted by the City in 2009, identified a goal for the HRC to work more closely with the downtown Commission, the City still struggles with how to achieve this goal as budget constraints have limited staff time and resources.

The HRC is also challenged with engaging the citizens of the community in a planning process that would guide future preservation policy within the broader context of heritage tourism planning, zoning and land use policy, community development, and sustainability initiatives.

In an effort to work towards facing these challenges, staff with the support and encouragement of the HRC applied and has been awarded a grant from the Historic Preservation Fund to develop a preservation plan for the community. The goal of this plan will be to connect the Asheville-Buncombe historic preservation program to overall decision making about community and economic development, public investment, urban form, and rural identity as opposed to the protection of isolated resources. We also see this effort as a means to provide an increased opportunity for public participation in historic preservation for Asheville and Buncombe County.

As noted above, this budget amendment is fully funded with grants and other non-General Fund revenue sources.

City staff recommends that City Council (1) authorize the City Manager to enter into an agreement with the N.C. Historic Preservation Office for the purpose of accepting the grant and developing the Asheville Buncombe Preservation Plan; and (2) a budget amendment, in the amount of $28,000, to accept a $15,000 grant from the Historic Preservation fund, via the NC State Historic Preservation Office and dedicate $13,000 in local matching funds.

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**P. RESOLUTION NO. 13-161 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE STATE MATCH TO PURCHASE A COMPRESSED NATURAL GAS REPLACEMENT VAN FOR HENDERSON COUNTY'S TRANSIT SYSTEM**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) to provide a Section 5307 Capital Grant in the amount of $1,453 to be used for the State match to purchase a Compressed Natural Gas (CNG) replacement van for Henderson County's transit system.

As a result of the 2000 Census, the City of Asheville was reclassified from a non-urbanized area to an urbanized area with a population greater than 200,000 persons and now includes municipalities in Buncombe, Haywood, and Henderson counties. After the reclassification, Henderson County's transit system became part of the transit systems operating

in the overall urbanized area. The Federal Transit Administration named the City of Asheville the designated recipient and as a result, the City of Asheville oversees all of the Federal funding administration. The City of Asheville and Henderson County have signed a sub-recipient agreement that specifies how the funds are disbursed. The City of Asheville is accountable to the Federal Transit Administration regarding the use of all Federal funds and owns all the capital items that Henderson County purchases with Federal funds.

The estimated total cost of the subject project is $95,386. Federal funds will provide $92,462, $80,841 are part of the ARRA apportionment and don't require a match; and $11,621 are covered with grant NC-90-X439; this grant requires a match of $2,906, $1,453 provided by NCDOT and the remaining $1,453 provided by Henderson County. The City of Asheville performs all of the administrative tasks including the bidding process, requests for funding, review of documentation, and reporting. The van has been already received, but confirmation from the state's participation came recently.

The total estimated project cost is $95,368, with 96% or $92,462 coming from Federal funds, 4% or $2,906 coming from Henderson County and the NCDOT. There is no direct fiscal impact to the City of Asheville, however the City's cost of administering the project is not recovered.

City staff recommends that City Council approve a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation in the amount of $1,453, as State match to purchase one CNG van.

**RESOLUTION BOOK NO. 35 - PAGE 389**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Hunt moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Bothwell and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. EAST END NEIGHBORHOOD ASSOCIATION - BREWGRASS FESTIVAL

Ms. Renee White, President of the East End Neighborhood Association (EEVSNA), said that they request Council to pass a resolution reiterating that the EEVSNA understanding of what occurred at a previous Council meeting in reference to BrewFest is in fact what happened.

"In the spring of 2012, the East End Community complained loudly about the BrewFest attendees' behavior while outside the gates of the MLK Park venue both before entering the Fest and after leaving it. People arrived with beer, drank that beer and left the refuse of broken beer bottles and Styrofoam coolers. After the Fest, folks that had been drinking beer all day had to be somewhat inebriated. They got into their cars and drove in that state through our neighborhood. Was there a sobriety checkpoint anywhere? No, there was not.

"Many of the attendees left their trash behind, blocked driveways and were belligerent with residents when told they could not park at a particular location. Some streets were so jammed with cars on both sides that they were almost impassible. Of particular concern in that instance was whether emergency vehicles like fire trucks could get through.

"After the outcry from the community, the organizers of BrewFest requested to attend the Association meeting in May 2012. Surely after attending that meeting, it had to be abundantly clear that we didn't want them to return. They were not welcome to return to MLK Park. In that meeting the Neighborhood Organizer liaison suggested that additional law enforcement would be present to patrol the neighborhood for the specific purpose of alleviating the problems mentioned earlier and said that once the Pack Square renovations were done, we would not have to worry about future festivals. To follow-up, I came before Council at their community meeting to inform Council that our community did not want BrewFest to return again after 2012. What we took from that Council meeting was that 7 council members supported us and had given BrewFest its walking papers.

"In May 2013, when it was announced that BrewFest was on the calendar, had a website up promoting the venue as MLK Park and was rapidly selling out tickets, folks attending the meeting were outraged. We could not have been more clear that we did not want them back. The puzzling part is that despite that meeting expressing our desires the community never heard a word from BrewFest organizers stating that they were unable to lock down a different venue and in fact would be at MLK Park again in September. One cannot help but feel that this attitude smacks of the lack of regard for the desires of our community. We were told by the Neighborhood Organizer liaison that the City had received no complaints about the 2012 Fest so it was assumed that all was well. That such a leap should be taken, again with no regard for what the neighborhood desired, is mindboggling. The City received no complaints because APD did a fine job of patrolling and keep things in order. Now does that make it right to then go on and proceed with an event that we vehemently objected to having? An event that we instructed the Neighborhood Organizer to make the City aware of our position? No, it does not.

"We get that the BrewFest was originally a so-called community initiative, but the East End alone has bore the brunt of it. We have said it before, and we'll say it again, we do not want BrewFest back in MLK Park.

"We suggest that they take the event to a more suitable venue like Louis Soccer field. It's accessible and there's plenty of parking.

"In closing, our Association support the fundraising BrewFest does for Big Brothers, but the type of event is just not a match for a family oriented neighborhood like ours.

"We trust that you will do the right thing and submit a resolution in regards to this issue. We have met with the organizers and express our desires if they return in 2013 that does include assurance that they will not be in MLK Park in 2014."

Mayor Bellamy said that this Festival sounds like an incompatible use in MLK Park. She supported the residents in their request to find the Brewgrass Festival another location in 2014.

Councilman Pelly moved to not allow the Brewgrass Festival in MLK Park in 2014 and beyond.

Mr. Eddie Dewey, representative from the Brewgrass Festival, said that since 1997 they have held the festival at MLK Park 10 times. They now understand the sensitivity of the neighborhood. They are in support of moving the festival and working with the City to move the festival in 2014 to Memorial Stadium.

Mayor Bellamy felt that moving from MLK Park to Memorial Stadium might be a worse location because it is located around more residential units. She suggested Carrier Park. She also suggested City staff work with Brewgrass organizers to find a suitable location that has additional parking and not a lot of residential around the location. She wanted both the Festival and the surrounding communities to be successful.

Councilman Davis felt it might be better to receive the staff report on the alternatives available before adopting a resolution.

Mayor Bellamy noted that the neighborhood has been to Council before and had their support. Now she felt it was time that they showed their support by adopting a statement.

When Councilman Smith hoped that a new location might be located where people can take the bus and have other modes of transportation, Mr. Dewey said that they are working on expanding the shuttle and trolley. He has spoken with the development group of the new apartments near Memorial Stadium and has plans to reach out to that community. It is still in a similar area, but the parking is in a different location. He noted that Brewgrass is a daytime event and over by 7:00 p.m. The music is not loud rock and roll and feels that Memorial Stadium is a suitable location. He said that MLK Park has been an event site for a long time, but it has become a community park and they agree that it's not the appropriate place for a festival. They have given the East End Community Association their word that they would not have the Festival in MLK Park in 2014, but it has been contingent on the fact that they can find a suitable location.

City Manager Jackson asked for Council's direction to relocate the Brewgrass Festival. It is the last event of this scale in MLK Park. The City has systematically tried to relocate or discontinue any other events of this size in MLK Park. He asked for (and recommended) Council policy direction that events of this size this will not be acceptable in MLK Park. In terms of alternative locations, there are many other factors that go into that, but if there is any Council direction to eliminate the range of options, that would be helpful. The City has evaluated Memorial Stadium from a technical standpoint.

Vice-Mayor Manheimer agreed that the festival should not be held in MLK Park in 2014, but was concerned we are telling them we don't like their next location.

Interim City Attorney McGlohon cautioned Council about not singling out the Brewgrass Festival vs. any other festival of a similar nature. Mayor Bellamy noted that City Manager Jackson stated that the City has systematically tried to relocate or discontinue any other events of this size in MLK Park.

The motion made by Councilman Pelly was seconded by Councilman Hunt.

City Manager Jackson said it's the scale of the event and not the issue of whether or not the event sells alcohol. There is the potential that the large population will damage the field and change the character and nature of the neighborhood. He suggested there be policy that you have a preferred use for this park and it's not for events of this scale.

When Councilman Bothwell asked how we would define the scale, Interim City Attorney McGlohon said that may need further investigation into the issue into the type of festivals that you want and do not want at MLK Park.

Mayor Bellamy said that this issue will come back to Council at their August 13, 2013, meeting with the issues addressed, but wanted to be clear that the Brewgrass Festival is an incompatible use for MLK Park and the neighborhood had asked Council to address this over a year ago.

**B. GREATER ASHEVILLE AIRPORT REGIONAL AUTHORITY UPDATE**

Mr. Lew Bleiweis, Executive Director of the Greater Asheville Airport Regional Authority, briefed Council on their activities of the past year and goals for the upcoming year.

On behalf of City Council, Mayor Bellamy thanked Mr. Bleiweis for his update.

### C. STORM DAMAGE/INFRASTRUCTURE UPDATE

Streets & Engineering Manager Greg Shuler provided Council with the background of some events that were a result of record rain for our area: (1) From January 1 through July 8, we've received 41.67 inches; (2) That exceeds our annual normal rainfall by 4.68 inches; (3) this is the earliest our annual total has been surpassed (by two month); and (4) we're well on our way to surpassing the record annual amount of 64.91 inches set in 1973. He then provided a timeline of events from July 3, 2013 - July 23, 2013, noting that from July 3 - 17, 2013, a total of 11.08 inches of rain hit the Asheville area, while areas like Town Mountain, and Beaverdam Valley received even more. Major storm damage repairs are underway in Beaverdam Valley by Public Works crews. On July 12, the City contacted local contractors to evaluate repair options for each slide. On July 22, bids were received on repair work for Spooks Branch and Sunset/Skyview Place slides. On July 23, work began on Spooks Branch and Sunset/Skyview Place slides. He outlined several streets they have contracted out, and then outlined the several streets they plan to repair in-house.

Mr. McCray Coates responded to Mayor Bellamy when she asked about the different areas in town that have stormwater drainage issues.

At the request of Mayor Bellamy, City Manager Jackson said that he would add information on the City's website regarding our drainage system, who to contact with questions and concerns, and what the City manages.

### D. LEGISLATIVE UPDATE

Budget Manager Tony McDowell highlighted for Council the following legislative issues of interest: Senate Bill 402 - Appropriations Act of 2013; House Bill 998 - Tax Simplifications and Reduction Act; House Bill 418 - Park Authority; House Bill 568 - Asheville Deannexation; House Bill 708 - Study Public Enterprise Systems/Use of Funds; and House Bill 94/Senate Bill 112 - Amendment to Environmental Laws 2013.

Interim City Attorney McGlohon responded to various questions from Mayor Bellamy regarding several of the bills.

Mayor Bellamy asked for a memo that provides Council with a detailed analysis of this impact of House Bill 94 regarding the requirement that penalty proceeds collected by local governments be remitted to the Civil Penalty and Forfeiture Fund instead of the local government's general fund and what it would look like financially for the City of Asheville.

Councilman Smith asked for information regarding the regulatory reform omnibus that one of the pieces of that bill would bar municipalities from requiring contractors to use living wage requirements.

In response to Councilman Bothwell, City Manager Jackson said that he will follow-up with Council on the annexation bill.

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING TO CONSIDER REZONING 86 ASHELAND AVENUE FROM REGIONAL BUSINESS DISTRICT TO CENTRAL BUSINESS DISTRICT

### PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO INCLUDE PARCELS LOCATED AT 86 ASHELAND AVENUE IN THE OFFICIAL DOWNTOWN HEIGHT ZONE MAP AND KEY PEDESTRIAN STREET MAP

**ORDINANCE NO. 4218 - ORDINANCE TO REZONE 86 ASHELAND AVENUE FROM REGIONAL BUSINESS DISTRICT TO CENTRAL BUSINESS DISTRICT**

**ORDINANCE NO. 4219 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE (ARTICLE 7-8-18) TO INCLUDE PARCELS LOCATED AT 86 ASHELAND AVENUE IN THE OFFICIAL DOWNTOWN HEIGHT ZONE MAP AND KEY PEDESTRIAN STREET MAP**

Due to the conflict of interest that Councilman Pelly leases property at 86 Asheland Avenue, Councilman Smith moved to recuse him from voting in this matter. This motion was seconded by Councilman Davis and carried unanimously.

Mayor Bellamy said that since the following two public hearings are related, she asked Mr. Glines to combine his presentation and that public comment would be taken on each item with two separate votes being taken.

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone 86 Asheland Avenue from Regional Business District to Central Business District. This public hearing was advertised on July 12 and 19, 2013.

He said the 3 properties are located at the intersection of Asheland Avenue and Hilliard Avenue. The properties are adjacent to the southern and western border of the Central Business District zone (CBD). The parcels slope away from Asheland Avenue and have access to a small right of way called Federal Alley at the east side of the property.

Hilliard Avenue was traditionally the southern border of the downtown area but in 2001 the CBD zoning was extended to include land between Coxe Avenue and Biltmore Avenue down to Southside Avenue. At the time it was felt that the greatest potential for growth was in this section adjacent to the traditional downtown core. The area around Ashland Avenue was left out of that rezoning effort because the development was newer and strongly followed suburban development patterns with greater building setbacks and parking in front of the buildings. If rezoning had been pursued, most of the existing buildings would have been *non-conforming* to CBD standards. With the addition of over ten years these buildings are now older and redevelopment energy is extending in this direction to this area.

When the request was reviewed at the Downtown Commission meeting, The Commissioners were interested in looking into expanding the CBD along the entire Asheland Avenue corridor down to Southside Avenue. This is a project that the Downtown Commission would like to explore later in the year. Members of the Planning and Zoning Commission also commented that it would be beneficial to consider the corridor comprehensively since the existing zoning seems to be out of alignment with current trends in the area. Although a process for considering a rezoning the corridor has not been determined, it is expected to include community meetings with affected property owners and the South French Broad neighborhood.

The Central Business District allows a wide range of residential and commercials uses with regulations in place for designing new structures so that new construction will be compatible with the urban context of downtown. Most of the regulations for downtown development were identified in the Downtown Master Plan completed in 2009 and later adopted with some amendments into the UDO in 2010. Building heights are defined by the Height Zone map and a recommendation to include these parcels on the map is associated with this application. There is also a Key Pedestrian Streets map (KPS) and certain streets that are primary pedestrian corridors are included in the map. Hilliard Avenue and Asheland Avenue north of Hilliard are both on the KPS map. The Downtown Commission is recommending the extension of the KPS map to include these properties.

The Regional Business District allows a large array of commercial uses and permits large structures (greater than 100,000 square feet). Building height is limited to 80 feet. The development zone is more common in suburban areas along busy highways, interchanges and thoroughfares. There is little character defining regulations in the ordinance and parking is allowed in front of buildings and at the sidewalk edge in regional business zones.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The zoning change is compatible with other parcels in the neighboring downtown area.
- Supports the goals of the Downtown Master Plan and the Strategic Operating Plan
- Supports the redevelopment of the south area of downtown

Cons:

- None noted.

The Planning and Zoning Commission voted unanimously to support the request to rezone the subject properties at their meeting on June 5, 2013. The Downtown Commission reviewed the request as a policy discussion at their meeting on May 10, 2013, and voted 8-0 to support it. Staff feels that the proposed zoning change supports adopted City goals and plans for the downtown area and is also supportive of it. A neighboring property owner called to support the zoning change, but no additional comments from the public were heard at that meeting or after.

Mr. Glines said that this is the consideration of an ordinance to amend the Unified Development Ordinance (Article 7-8-18) to include parcels located at 86 Asheland Avenue in the official Downtown Height Zone Map and Key Pedestrian Street Map. This public hearing was advertised on July 12 and 19, 2013.

He said that the Planning and Development Department has received an application to rezone three parcels at 86 Asheland Avenue. The Downtown Central Business District (CBD) properties are subject to height regulations that are based on their specific location in the downtown area. Also, some streets in downtown are designated as Key Pedestrian Streets which have additional development regulations designed to enhance the pedestrian relationship for new construction. If the rezoning is approved, these maps should be reviewed and adjusted to consider the rezoned parcels.

Height Zone Map - The height zone map is adopted as a part of the Central Business district (7-8-18 of the UDO). The map identifies areas for the *tallest height zone* (265 feet) and the *intermediate height zone* (145 feet) and *buffer height* that moderates the tallest height zone along view shed corridors. The Planning and Zoning Commission and the Downtown Commission recommended that the intermediate height zone be extended for these three parcels along Asheland Avenue. The intermediate height zone has been used at other locations that have served as the edge of the downtown CBD. If the study proceeds later this year to expand the CBD further south along Asheland Avenue, the height zone will be reviewed again.

Key Pedestrian Streets - The Key Pedestrian Streets map (KPS) is a designation along specific streets that serve as primary pedestrian linkages throughout the downtown area. When a street is designated a KPS, there are several development regulations in place that are designed to enhance the pedestrian experience at the sidewalk level. For example, on a KPS, buildings must provide 70% windows, doors or other openings at pedestrian level and parking garages must provide either an occupiable space for the first 20 feet of depth or provide fenestration details meeting regulations. Asheland Avenue is a KPS north of Hilliard Avenue already. The Downtown Commission recommends that the KPS designation extend as far as the three

properties seeking rezoning. If Asheland Avenue is studied for further CBD expansion the issue of extending the KPS map will also receive discussion then.

The Planning and Zoning Commission reviewed the map amendments and unanimously recommended the placement of the intermediate height zone on and the extension of the key pedestrian streets map to the subject properties at their meeting on June 5, 2013. The Downtown Commission also supported a similar recommendation at their meeting on May 10, 2013, with a vote of 8-0. Staff concurs with this recommendation because it supports the goals of the Comprehensive Plan and is conformance with the adopted Downtown Master Plan.

Based on the above findings and the analysis in the report, staff finds the map amendment to be reasonable and conforming to the Comprehensive Plan.

Pros:

- Adjusts development maps in accordance with land use changes
- Implements portions of the *Downtown Master Plan and supports City Council's Goals and Vision Plan*
- Removes incongruous development patterns from an area suitable for more sustainable models

Con:

- None noted

City staff recommends City Council approve the amendment to the Height Zone map to include the intermediate height for the subject properties and also the amendment to the Key Pedestrian Streets map to extend this designation to the subject area and find that the amendment is reasonable and is consistent with the Comprehensive Plan and other adopted plans, based on information provided in the staff report and as stated in the staff recommendation.

Mayor Bellamy opened the public hearing at 6:22 p.m. on both items and when no one spoke, she closed the public hearing at 6:22 p.m.

In response to Councilman Smith on why Southside was not on the Key Pedestrian Map, Mr. Glines said that when the Downtown Master Plan was adopted, the development pattern was not moving in that direction yet, but there is interest in studying areas further south along Asheland Avenue and bringing them in on the Key Pedestrian Map.

Mayor Bellamy said that members of Council have previously received copies of the ordinances and they would not be read.

Councilman Smith found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4218. This motion was seconded by Councilman Davis and carried unanimously (Councilman Pelly recused).

**ORDINANCE BOOK NO. 28 – PAGE 295**

Councilman Smith found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4219. This motion was seconded by Councilman Davis and carried unanimously (Councilman Pelly recused).

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**C. PUBLIC HEARING TO SUPPORT A SECTION 108 LOAN FOR THE EAGLE MARKET STREET DEVELOPMENT**

This item has been pulled from the agenda.

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 13-156 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ART & CULTURAL COMMISSION**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Public Art & Cultural Commission.

Ms. Jennifer Gordon resigned from the Commission, thus leaving an unexpired term until June 30, 2014.

The following individuals have applied for the vacancy: Charley Akers, Amy Huntsman, Wayne Wheeler, Jared Gold, Bryan Andrews, Victor Palomino, Kara Warren, Denise Drury, Anthony Johnson and Constance Richards.

After hearing the recommendations by the Public Art & Cultural Commission and noting the need for diversity, Councilman Smith moved to appoint Victor Palomino as a member of the Public Art & Cultural Commission, to serve the unexpired term of Ms. Gordon, term to expire June 30, 2014, or until his successor has been appointed. This motion was seconded by Councilman Hunt and carried unanimously.

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**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Ms. Vicky Ballard, Executive Director of the Colburn Museum at Pack Place, and Ms. Dora Nelson, teacher, explained the importance of science education and felt it needed assistance in maintaining its visibility and viability due to changes in Pack Place. Councilman Hunt, member on the Pack Place Board, updated Council on the concerns expressed about the Art Museum expansion and recommended that Council continue to look at the Pack Place Board of Directors to continue to work with the partners to resolve the issues. Mayor Bellamy suggested that when the process is complete, that the Pack Place Board and the Art Museum update City Council.

Mr. Ken Michalove provided City Council with an memorandum dated July 23, 2013, in which he raised questions regarding the integrity of Vice-Mayor Manheimer, Councilman Hunt and City Manager Jackson in that he felt that they have violated the principle of "conflict of interest" regarding the $2 Million Asheville Art Museum "tax" that the Asheville City Council adopted in the 2013-14 budget.

Mr. Wally Lee, Vice-President of the Buncombe County Republican Men's Club, asked for adoption of the following resolution: "At this 60th Anniversary of the cessation of hostilities of the Korean War, no words can properly convey to the brave men and women who fought so nobly our heartfelt thanks for their selfless service. Therefore, we hereby resolve to convey such thanks to those who fought to preserve the freedoms that we enjoy today as American citizens. Many gave some, some gave all. For this, we do humbly offer this sincere tribute."

Mayor Bellamy said that Council has recognized veterans in the past and said that a formal resolution will be prepared for City Council consideration.

**Closed Session**

At 6:50 p.m., Councilman Pelly moved to go into closed session for the following reason: To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(1); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 7:10 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:10 p.m.

Magdalen Burleson
CITY CLERK

MAYOR

Tuesday – August 13, 2013 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; Interim City Attorney Martha Walker-McGlohon; and Deputy City Clerk Jaime Matthews

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Mayor Bellamy gave the invocation.

**I. PROCLAMATIONS:**

**A. EMPLOYEE RECOGNITIONS**

City Manager Jackson recognized (1) Daryl Rice, Rob Martin and Kevin Haughinberry for receiving their Compressed Natural Gas Certification; (2) Fire Battalion Chief Joy Ponder for graduation from the Executive Fire Officer Program; (3) Darlene Barnell for rescuing a small boy from a group of dogs; (4) Amy Patterson for earning the title of Certified Local Government Purchasing Officer; and (5) Robert Griffin, General Services Director, who will soon be retiring.

Mayor Bellamy thanked the employees on what they do on behalf of the City of Asheville and City Council. She was proud of City staff and looked forward to highlighting more accomplishments.

**B. STRIVE NOT TO DRIVE PROGRAM**

Mayor Bellamy recognized Ms. Claudia Nix who explained the Strive Not To Drive Program. Mayor Bellamy then said that each year Strive Not To Drive recognizes individuals and organizations that help make getting places without driving alone in a car easier. The winners were nominated by their friends, peers, and admirers for their dedication to striving not to drive. The Golden Spoke Award goes to people who make commuting by bike a priority. The Golden Wheel Award goes to people who are multi-modal mixing walking, cycling, and riding the bus to get the places they need to go. We also give a Strive Not To Drive Leadership Award to people who lead by example and make it easier for others to Strive Not To Drive. This year Strive Not To Drive is recognizing two individuals with the Golden Spoke Award: Jarret Porter and Moses Soto; Golden Wheel Award: Derek Daniels; and Strive Not to Drive Leadership Award: Kathy Millar. The Workplace Challenge winners are as follows: winner for business and organizations with fewer than 10 employees – Southwings; the winner for 11-30 employees – Southern Appalachian Highlands Conservancy; the winner for 31-50 employees – REI; the winner for 51 to 251 employees – Evergreen Community Charter School; and the winner for business and organizations over 251 employees – Buncombe County.

## II. CONSENT AGENDA:

At the request of Vice-Mayor Manheimer, it was the consensus of Council to add Consent Agenda Item "M" - Resolution encouraging the N.C. Dept. of Environment and Natural Resources and Duke Energy Progress to take expedient and appropriate action to deal with the impact of coal ash leachate at the Duke Energy facility.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 23, 2013**

**B. RESOLUTION NO. 13-162 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A GENERAL SERVICES AGREEMENT WITH WITH CAVANAUGH & ASSOCIATES, P.A. FOR THE NON-REVENUE WATER MANAGEMENT PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a general services agreement with Cavanaugh & Associates, P.A., for the Non-revenue Water (NRW) Management project for the not-to-exceed amount of $151,925.

The Water Resources Department has an annual non-revenue water rate of approximately 30-35%. In an effort to reduce this percentage, the department has been working with Will Jernigan at Cavanaugh & Associates, P.A., since January 2013 to provide feedback and guidance on the department's Non-revenue Water (NRW) Program and water audit. Mr. Jernigan is recognized nationally as a leader in Revenue Recovery and Water Auditing and has taught workshops, written technical papers, and helped to pioneer many of the standards adopted by the American Water Works Association (AWWA). More specifically to this project, Mr. Jernigan and other Cavanaugh staff have been participating in NRW team meetings and providing feedback regarding team goals and objectives and water accounting practices.

In April 2013, the scope of Cavanaugh's contract was expanded to include assistance with data collection in anticipation of conducting a Benchmark Water Audit. Water Resources staff need continued guidance over the next 12 months to develop the Benchmark Water Audit based on AWWA methodologies and subsequently, develop a comprehensive NRW Program that will ultimately reduce the department's overall non-revenue water percentage. Water Resources staff are confident that Cavanaugh & Associates is the most qualified firm to assist the department with this project and recommends City Council approval to waive the City's Procurement, Purchasing & Contracting Policy to enter into a general services agreement with Cavanaugh & Associates for a not-to-exceed amount of $151,925.

The funding needed for this agreement is currently allocated within the Water Resources Operating Fund.

City staff recommends City Council approval of a resolution authorizing the City Manager to execute a general services agreement with Cavanaugh & Associates, P.A., for the Non-revenue Water (NRW) Management project for the not-to-exceed amount of $151,925.

**RESOLUTION BOOK NO. 35 - PAGE 388**

**C. RESOLUTION NO. 13-163 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A SPECIAL MAINTENANCE AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO ALLOW PUBLIC PARKING UNDER A SECTION OF WEST ASHEVILLE RIVERLINK BRIDGE IN THE RIVER ARTS DISTRICT**

Summary: The consideration of a resolution authorizing the Mayor to execute a special maintenance agreement between the N.C. Dept. of Transportation and the City of Asheville to allow public parking under a section of bridge # 705 in the River Arts District.

Bridge # 705 is known as the West Asheville Riverlink Bridge and it provides access for SR 3548 (Haywood Road). In addition, it provides a critical connection between downtown Asheville and West Asheville. The area under the bridge between the French Broad River and the Norfolk Southern railroad tracks has been unofficially used for parking purposes for many years and it is currently the primary parking area for the Jean Webb Park. The purpose of the agreement is to make the parking official.

The City and the N.C. Dept. of Transportation have similar agreements at other locations including the public parking under the I-240 bridge adjacent to North Lexington Avenue, the public parking under the US 25 (McDowell Street) bridge adjacent to SR 3556 (Meadow Road), and the public parking adjacent to Cherry Street.

There is no immediate fiscal impact for the subject special maintenance agreement.

Staff recommends that City Council approve a resolution authorizing the Mayor to execute a special maintenance agreement between the N.C. Dept. of Transportation and the City of Asheville to allow public parking under a section of bridge # 705 in the River Arts District.

**RESOLUTION BOOK NO. 35 - PAGE 389**

**D. RESOLUTION NO. 13-164 - RESOLUTION CONVEYING THANKS TO THE MEN AND WOMEN WHO FOUGHT IN THE KOREAN WAR**

Mayor Bellamy was pleased to give thanks to these individuals in the past, as well as expressing thanks to them this year.

**RESOLUTION BOOK NO. 35 - PAGE 390**

**E. RESOLUTION NO. 13-165 - RESOLUTION SETTING A PUBLIC HEARING ON AUGUST 27, 2013, FOR A SUBSTANTIAL AMENDMENT TO THE 2013-14 CONSOLIDATED ANNUAL ACTION PLANS FOR CDBG AND HOME TO CONSIDER A SECTION 108 LOAN TO EAGLE MARKET STREETS DEVELOPMENT CORPORATION FOR THE EAGLE MARKET PLACE COMMERCIAL DEVELOPMENT**

Summary: The consideration of a resolution setting a public hearing on August 27, 2013, for a substantial amendment to the 2013-2014 Consolidated Annual Actions Plan for CDBG and HOME to consider a Section 108 Loan to Eagle Market Streets Development Corporation for the Eagle Market Place commercial development.

Eagle Market Streets Development Corporation (EMSDC) has requested that the City loan $718,000 from an existing HUD Section 108 loan for the Eagle Market Place commercial development. This loan was received by the City in 2004 for the purpose of assisting in the financing of a mixed-use development in the Eagle-Market Streets area. EMSDC proposes to rehabilitate and develop approximately 10,000 square feet of commercial rental space in the Del Cardo, Ritz and Dr Collette buildings located on Eagle and Market Streets in downtown Asheville.

The substantial changes to the project funded by HUD in 2003 and the proposal under consideration include:

- Development Partners: EMSDC originally was partnered with the MT Zion Development Corporation, Enterprise Foundation and Historic Acquisitions, Inc. EMSDC is now partnering with Mountain Housing Opportunities.
- Square footage of project by uses: The total leasable building area of 13,000 square feet included five residential units encompassing approximately 3,000 square feet and

approximately 10,000 square feet of commercial space. The current project includes 62 residential units, and 10,000 square feet of commercial space.

- Sources, types and funding levels: The original project's estimated total development cost was $2,413,514. Sources included the Section 108 loan ($800,000), Grants, including CDBG and HUD EDI grant funding ($870,000) and equity of $743,514. The current commercial-only project estimated total development cost is $2,351,678, and includes HUD Section 108 funding ($718,000); NeighborWorks Capital loan ($1,509,172) and grant or deferred loans of $124,506.

The proposed amendment uses funds already available through the CDBG program. The program advances CDBG funds to the City. These funds must be repaid to HUD, either from program proceeds or by using future CDBG allocation to the City. The City has been asked by the developer to provide sufficient collateral to allow HUD to approve the release of these funds for the stated purpose.

Staff recommends that Council set a public hearing on August 27, 2013, for consideration of amendments to the 2013-2014 Consolidated Annual Action Plans.

**RESOLUTION BOOK NO. 35 - PAGE 391**

**F. RESOLUTION NO. 13-166 - RESOLUTION APPROVING THE SINGLE SOURCE PURCHASE OF A TREMBLE S6 3" TOTAL STATION ROBOTIC SURVEYING INSTRUMENT FROM DUNCAN-PARNELL GEOMATICS TO INTERACT WITH EXISTING CITY SOFTWARE SYSTEMS**

Summary: The consideration of a resolution authorizing the Asheville Public Works Department to purchase the Tremble S6 3" Total Station Robotic Surveying instrument based on single source and standardization parameters.

NC-GS 143-129 (e) allows municipalities to exercise certain exceptions to bidding requirements when a product is only available from a single source supplier or standardization requirements are an overriding factor in said procurement. Both instances apply in the Total Station procurement, specifically: Duncan-Parnell Geomatics is the only supplier of the Tremble unit desired, and it's compatibility with existing City software systems is of upmost importance for a seamless implementation and adaption.

The total cost of the unit will be $42,317.29. Funding for this purchase is included in the FY 2013-14 Public Works Engineering Division operating budget.

City staff recommends City Council adopt a resolution authorizing the Public Works Department to purchase the Tremble S6 3" Total Station Robotic Surveying Instrument based on single source and standardization exemptions.

**RESOLUTION BOOK NO. 35 - PAGE 392**

**G. RESOLUTION NO. 13-167 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AUTOMATIC AID SERVICE AGREEMENT WITH THE REEMS CREEK FIRE DEPARTMENT FOR AUTOMATIC AID RESPONSE**

Summary: The consideration of a resolution authorizing the Mayor to sign an automatic aid service agreement in the amount of $82,655.25 with the Reems Creek Fire Department for automatic aid response.

City Council approved in the FY 2013/2014 adopted budget funding to continue an automatic aid service agreement with the Reems Creek Fire and Rescue Department. This agreement has been in place since 2007 and provides for automatic response by the Reems

Creek Fire and Rescue Department to emergency incidents to locations in the Beaverdam Valley that benefit the City of Asheville. This service agreement provides for a stronger standard of cover in this area.

Staff recommends that City Council adopt a resolution authorizing the Mayor to sign an automatic aid agreement in the amount of $82,655.25, with the Reems Creek Fire and Rescue Department.

**RESOLUTION BOOK NO. 35 - PAGE 393**

**H. RESOLUTION NO. 13-168 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE TWO CONSTRUCTION CONTRACTS WITH BUCHANAN & SONS INC. FOR SPOOKS BRANCH ROAD REPAIRS AND YOUNG & MCQUEEN FOR SUNSET DRIVE & SKYVIEW PLACE**

Interim City Attorney McGlohon provided Council with a revised resolution that removes reference to the City using the emergency provision in awarding the contracts.

Summary: The consideration of a resolution authorizing the City Manager to execute construction contracts for immediate repairs to the City's rights-of-way with Buchanan & Sons, Inc. for Spooks Branch Road; and Young & McQueen for Sunset Drive & Skyview Place.

From January 1, 2013 to July 8, 2013, the Asheville area received 41.67 inches of rainfall, exceeding the City's normal annual rainfall for the same time period by 4.68 inches. More specifically, on July 3, 2013, 3.48 inches of rain fell in downtown Asheville. On July 4, 2013, another 1.48 inches of rain fell in the Asheville area, culminating in almost 5 inches of rain within a 24 hour period. As the rain continued to fall, rights of way located throughout the City but, primarily in the City's higher elevations, experienced severe stress. Stormwater runoff rapidly undermined steep soil banks, causing huge chunks of asphalt/pavement of the shoulder of many City roads to crumble as the underlying soil gave in to the pressure of the velocity of the water flow. City work forces immediately commenced repairs, to preserve health, safety and property. The larger and more complicated slides however, exceeded the City's ability to handle with in-house work force. Fearing an imminent collapse of City roads where the larger slides were situated, City staff rapidly assembled a team of experienced, trained and capable area contractors. The team of contractors accompanied City staff to inspect each site. The magnitude of the elevation, depth and width of the slides made it apparent that a temporary fix to protect health, safety and property was inextricably tied to a permanent remedy. At least two of the sites required an evaluation and assessment by a structural engineer. Those two sites are not a part of this report. Based upon City staff knowledge and the comments/concerns from the contractors, a bid document was quickly prepared; requesting bids to rapidly, efficiently and effectively remedy the threat to life, health and property. The bid document was forwarded to the area contractors. The City received several responses to the bid, all of which were in an amount under the $500,000 formal bidding threshold of NCGS §143-129.

The City's Contracting and Procurement Policy requires that all construction contracts in excess of $100,000, perceive prior approval by City Council. City staff awarded the informal contracts to the following entities: Buchanan & Sons, Inc. of Whittier NC, for Spooks Branch Road repairs for $267,674, and Young &McQueen of Burnsville NC, for Sunset Drive & Skyview place for $425,450 contingencies, based primarily upon lowest responsible, responsive bids, availability to mobilize, bonding capacity and previous performance on similar projects.

Pros:

- Repair vulnerable roadway sections damaged by heavy rainfall.
- Improve City infrastructure.
- Allow for the impacted communities to return to normal as soon as possible.
- Minimize potentially dangerous situations near slides areas.

- Minimize environmental impacts near slide areas.

Cons:

- Use of City funds allocated for other improvements.
- Will consume staff time previously scheduled for other infrastructure projects.

The total amount of these two contracts including a 15-20% contingency was $812,000 Funding for these contracts came from the existing FY 2013-14 Streets & Sidewalks budget that was approved by City Council in June. Staff will be reporting back to the Finance Committee and City council on the potential fiscal impact of all of the landslides once more definitive cost estimates are known for the other landslide repairs.

City staff recommends City Council ratify and approve the execution of construction contracts with Buchanan & Sons, Inc. of Whittier NC, for Spooks Branch Road repairs for $267,674, and Young & McQueen of Burnsville, NC, for Sunset Drive & Skyview Place for $425,450, within the provisions of N.C.G.S. §143-131, and as being consistent with and not in abrogation with the provisions of the City's Contracting and Purchasing policy.

**RESOLUTION BOOK NO. 35 - PAGE 394**

**I. ORDINANCE NO. 4220 - BUDGET AMENDMENT TO MOVE THE FISCAL YEAR 2013 COMPUTER REPLACEMENT BUDGET FROM THE GENERAL FUND TO THE GENERAL CAPITAL PROJECTS FUND AND INCLUDE FUNDING FRO THE REPLACEMENT OF ADDITIONAL POLICE DEPARTMENT COMPUTERS**

Summary: The consideration of a technical budget amendment in the amount of $405,000 to move the Fiscal Year 2013-14 computer replacement budget from the General Fund to the General Capital Projects Fund and include funding for the replacement of additional police department computers.

As a part of the FY 2013-14 Adopted General Fund Budget, City Council approved a $350,000 budget for the replacement of computers and associated equipment, with funding for the purchases coming from the issuance of debt proceeds. Since these purchases will be funded with debt proceeds, staff is recommending that the budget for PC replacement be moved out of the General Fund and into the General Capital Projects Fund, which is a multi-year fund that is more appropriately designed for these types of transactions. Consistent with Council's Financial Policies, the term for debt issued to finance capital does not exceed the expected useful life of the equipment purchased. Computers are typically financed for a period of 48 months. In addition, staff has refined the estimate for funding needed for FY 2013-14 to $405,000, which includes the additional replacement of Police Department computers.

This technical budget amendment moves the budget from one fund to another which has no overall fiscal impact to City. The increase in the overall purchase budget from $350,000 to $405,000, will increase the annual debt payment on this purchase by approximately $5,000.

City staff recommends City Council adopt the technical budget amendment in the amount of $405,000 to move the Fiscal Year 2013-14 computer replacement budget from the General Fund to the General Capital Projects Fund.

At the request of Mayor Bellamy, it was the consensus of Council to have Interim City Attorney McGlohon provide a status report and plan to digitalize their legal files.

**ORDINANCE BOOK NO. 28 - PAGE 302**

**J. RESOLUTION NO. 13-169 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A FEDERAL AVIATION ADMINISTRATION GRANT FOR THE GREATER ASHEVILLE REGIONAL AIRPORT FOR A NEW AIRCRAFT RESCUE FIRE FIGHTING FACILITY**

Summary: The consideration of a resolution authorizing the Mayor to approve a Grant Offer from the Federal Aviation Administration (FAA) in the amount of $2,562,954.

The FAA has offered a grant agreement to the Greater Asheville Regional Airport. This grant, in the amount of $2,562,954, is for a new Aircraft Rescue Fire Fighting Facility.

Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 3-37-0005-042-2013.

**RESOLUTION BOOK NO. 35 - PAGE 396**

**K. RESOLUTION NO. 13-170 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH MOTOROLA, INC. TO PROVIDE MAINTENANCE COVERAGE FOR THE CITY'S RADIO SYSTEM FROM AUGUST 1, 2013 - JULY 31, 2014**

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with Motorola, Inc. to provide maintenance coverage for the City's radio system.

Motorola, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of August 1, 2013 through July 31, 2014 has remained the same as last year's cost. Funding for this contract was appropriated in the FY 13/14 budget process.

The renewal agreement reflects an annual charge of $147,163.92 and covers additional equipment purchased by the City to equip new vehicles and replace broken equipment.

One hundred and forty-seven thousand, one hundred and sixty four dollars was appropriated in the City of Asheville's Fiscal Year 2014 operations budget for the purpose of maintaining the City of Asheville's public radio system on a 24x7 basis. This action has no impact on the fund balance in the General Fund.

City staff recommends the adoption of the resolution for radio maintenance coverage for the term of August 1, 2013 through July 31, 2014.

**RESOLUTION BOOK NO. 35 - PAGE 397**

**L. RESOLUTION NO. 13-172 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT 0.02 ACRES OF REAL PROPERTY FROM BUNCOMBE COUNTY AT 70 W. CHAPEL ROAD, ALSO KNOWN AS RAY KISIAH PARK**

Summary: The consideration of a resolution authorizing the Mayor to accept a transfer of 0.02 acres of real property from Buncombe County at 70 West Chapel Road.

Per Resolution No. 13-115, the City transferred 2.8 acres of land at 70 West Chapel Road to Buncombe County, whose intent was to combine the land with adjacent property to assemble the parcels needed for future GE Aviation manufacturing plant. During the course of title examination for this property, Buncombe County discovered a 2 foot strip of land separating the GE site and the City property, running the length of the entire shared boundary line of

approximately 800 feet. This strip of land has now been acquired by Buncombe County in order to resolve any issues with combining the parcels of land.

In practical terms, Buncombe County has resolved the issue of the 2 foot strip that stood between the 2.8 acre parcel and the GE site, but now has no additional interest in retaining the remainder of the 2 foot strip area that continues along the City's property boundary. The County has offered to convey this remnant area, measuring 2 feet by 376 feet (approx. 0.02 acres), to the City of Asheville.

Given the size and shape of the area, any additional maintenance costs will be absorbed into the existing budget for the maintenance of Ray Kisiah Park. No legal fees or deed preparation fees for this transfer.

City staff recommends that City Council adopt the resolution authorizing the Mayor to accept a transfer of 0.02 acres real property at 70 West Chapel Road from Buncombe County.

**RESOLUTION BOOK NO. 35 - PAGE 399**

**M. RESOLUTION NO. 13-174 - RESOLUTION ENCOURAGING THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES AND DUKE ENERGY PROGRESS TO TAKE EXPEDIENT AND APPROPRIATE ACTION TO DEAL WITH THE IMPACT OF COAL ASH LEACHATE AT THE DUKE ENERGY FACILITY**

Summary: The N.C. Dept. of Environment and Natural Resources (DENR), Division of Water Quality, and Duke Energy Progress, Inc. have entered into a Draft Consent Order upon which public comment is being received until August 14, 2013. This resolution represents the public comment of the governing body of the City of Asheville on behalf of the citizens of Asheville.

DENR sued Duke Energy Progress, Inc. for unpermitted discharges, connected with its steam electric generating plant in Asheville, NC. The discharge is known as coal ash, a black, powdery material that is sluiced into holding ponds. DENR and Duke Energy have negotiated a draft Consent Order as some of the coal ash has been allowed to seep into the French Broad River. Coal ash is generated as a byproduct at the Duke Energy facility.

The Consent Order calls for additional monitoring at the site to determine the level of contamination as well as defining the best method for remediation. As part of this draft order, DENR is accepting public comment.

This action complies with one of Council's Strategic Goals by supporting safety and quality of life.

Pros

- Encourages DENR to expedite the monitoring and evaluation of the impact of coal ash leachate into the French Broad River.
- Request that if contamination is discovered above acceptable levels that Duke Energy will act quickly to remediate the site.

Cons

- None

Staff recommends that City Council consider the resolution.

In response to Councilman Davis, who noted that this is a short-term step by adding our voice regarding coal ash ponds, but that we will look for a longer-term solution, Mayor Bellamy agreed and noted that Duke Energy Progress is a partner of the City and they recognize that we want them to look at this issue. She said this is an important issue and this is a balanced approach.

**RESOLUTION BOOK NO. 35 - PAGE 403**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Bothwell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Pelly and carried unanimously.

## III. PRESENTATIONS & REPORTS:

### A. HOMELESS INITIATIVE ADVISORY COMMITTEE UPDATE

Mr. David Nash, Chair of the Homeless Initiative Advisory Committee, and Homeless Initiative Coordinator Heather Dillashaw, briefed Council on their activities of the past year and goals for the upcoming year.

After comments, on behalf of City Council, Mayor Bellamy thanked Mr. Nash for his leadership and the entire Committee for their dedication and outreach in the community. She also thanked Ms. Dillashaw for her work in this very important area of the City.

### B. STORMWATER INFRASTRUCTURE

Assistant City Manager Cathy Ball said that the purpose of this report is to provide City Council with the systematic approach for addressing storm water management, particularly on steep slopes.

As you are aware, this year we have had record rainfall events. These events have resulted in numerous slides and failures of road ways in steep slope areas. Repairing these failures will be a significant expense to the city.

In an effort to address our vulnerability in these areas, with the anticipation of continued high rainfall events, staff would like to develop a strategy to reduce damage associated with these occurrences.

The action plan would include those short and long term strategies. The plan would include the following: (1) coordinate with local experts to target specific areas that are more vulnerable to slides and roadway failures; (2) hold community meetings in these areas to get feedback from residents on their concerns; and (3) develop both short and long-term strategies to address vulnerabilities associated with storm water run-off on steep slopes, including but not limited to; increasing ditch maintenance, performing systematic analysis of watersheds for more detailed improvements, and reviewing our current ordinances related to development in steep slope areas.

Our community is fortunate to have the National Climactic Data Center in Asheville along with other experts in structural and geotechnical soil stabilization. We will call upon these experts for support and assistance in developing recommendations to address these issues.

Our implementation schedule would be to proceed with Council approval in developing an evaluation team. The public would be invited to community meetings to discuss their concerns. Staff would expect to bring recommendations before Council during the next budget cycle.

Pros:

- Provides a community-wide systematic approach to reducing damage from significant rain events.
- Provides strategic planning for climate adaptation change.
- Provides both short and long-term strategies for addressing slope stabilization.

Con:

- The process will require substantial staff resources.

Minimal Fiscal Year 2014 budget impact is anticipated and will be funded through existing appropriations. The financial impacts are unknown at this time but will be provided to council during the FY 15 budget process. Staff will be looking for low cost solutions and revenue enhancements, inasmuch as they are available and appropriate, to solve the problems.

Staff requests that City Council direct the City Manager to proceed with the recommended evaluation.

After discussion, it was the consensus of Council to have City Manager Jackson proceed with the recommended evaluation which includes developing a systematic plan for upgrading stormwater maintenance and provide at the Council annual retreat or initial budget planning session.

## IV. PUBLIC HEARINGS:

### A. PUBLIC HEARING RELATIVE TO A SUBSTANTIAL AMENDMENT TO THE 2013-14 ACTION PLAN TO MAKE FINAL ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME FUNDS

### RESOLUTION NO. 13-173 - RESOLUTION MAKING A SUBSTANTIAL AMENDMENT TO THE 2013-14 ACTION PLAN TO MAKE FINAL ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME FUNDS

Community Development Director Jeff Staudinger said that this is consideration of a resolution for a substantial amendment to the 2013-14 Action Plan to make final allocation of Community Development Block Grant and HOME funds. This public hearing was advertised on August 2 and 9, 2013.

The final revised grants of HUD funds for CDBG and HOME have been received. The revised CDBG grant available for the current year is $993,543. Our projected allocation was $825,773. The revised HOME grant is $938,716; the projected grant was $848,276. To determine the total available in each program, income received and not reallocated during prior years and funds returned from funded projects that did not move forward are added to the new grants from HUD. The City has a total available $1,224,156 in CDBG funds and $1,484,403 in HOME funds in the fiscal year beginning July 1, 2013. The City's Housing and Community Development Committee has made recommendations for the use of CDBG funds, which must be used in housing or community development programs in Asheville, and the Asheville Regional Housing Consortium has recommended uses for the HOME funds, which must be used for housing programs within the four-county Consortium area (Buncombe, Henderson, Madison, and Transylvania counties). A total of 19 CDBG and 12 HOME programs are recommended for

funding. Allocations are consistent with the proposed Strategic Housing & Community Plan for 2010-2015.

Pros:

- Approval of the Action Plan paves the way for the receipts of $2,708,559 of HUD funding to the City and region, which will be used to create affordable housing, create jobs, and improve public infrastructure.
- HUD funding will leverage $25,000,000 of additional funding for these projects.
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee and the Asheville Regional Housing Consortium.

Con:

- It is not possible to fund all the applications received, and most of those funded will receive less than the amount requested.

The Action Plan is fully funded from federal CDBG & HOME entitlement grants, unused funds from previous completed projects, and estimated program income. Staff costs to administer the program are also fully paid from federal sources. The funded programs will provide new construction and other economic activity in the City and region, creating and sustaining employment.

The Housing and Community Development Committee and the Asheville Regional Housing Consortium recommend approval of (1) a resolution authorizing an amendment of the City's Consolidated Annual Action Plan for 2013-14.; and (2) at the next formal Council meeting a budget amendment, in the amount of $128, due to a funding reduction from HUD.

Mayor Bellamy opened the public hearing at 6:00 p.m., and when no one spoke, she closed the public hearing at 6:00 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 13-173. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 400**

**B. PUBLIC HEARING TO CONSIDER REZONING PROPERTY WITH MULTIPLE ADDRESSES ON FINALEE AVENUE FROM INSTITUTIONAL DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

**ORDINANCE NO. 4221 - ORDINANCE TO REZONE PROPERTY WITH MULTIPLE ADDRESSES ON FINALEE AVENUE FROM INSTITUTIONAL DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone property with multiple addresses on Finalee Avenue from Institutional District to RS-8 Residential Single-Family High Density District. This public hearing was advertised on August 2 and 9, 2013.

Mr. Esselstyn said that the subject site, roughly 1.4 acres of heavily wooded, steeply sloped land, has been involved in multiple zoning actions and development proposals in recent years, as described in the above section. While the high-density multi-family development proposals met technical requirements, there was consternation on the part of City Council, as well as multiple neighboring citizens, about the compatibility of that type of use in this location.

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The current zoning designation, Institutional, can be traced back to circumstances years ago, when this property was under the same ownership as the complex to the northeast (now the Kenilworth Apartments), which at the time was a medical institution. The subject property, which may have at that time shared a PIN with the parcel on which the complex was built, was considered part of the institution's campus. When the building was converted to apartments, the existing zoning district allowed high density multi-family residential uses, and it was preserved.

Staff feels (as was reflected in the 2011 staff-initiated rezoning) that the proposed zoning reflects a density more appropriate for these steeply sloped properties in a predominately single-family residential neighborhood, and eliminates the potential for certain commercial uses (allowed in the Institutional district) that are unlikely to be compatible at this location.

The site has already been subdivided into lots suitable for single-family development, and the Institutional Zoning District allows single-family uses, but the side setbacks in Institutional are more restrictive than in RS-8. While the single family lots exceed the minimum lot size for the RS-8 district, width is at a premium because of the steep drop-off, and the difference between the ten-foot side setback in Institutional and the six-foot setback in RS-8 was one factor prompting the applicant to request the rezoning.

As recently as May of this year, the subject area was within a single 3.17-acre parcel. The rezoning application was submitted after the subdivision of the parcels along Finalee had been recorded, but before new PINs were assigned, so the original application referenced the "parent" PIN of out of which the nine house lots were divided. The application didn't specify that the southern area was meant to be omitted, so the rezoning was originally analyzed and advertised as including the 1.74-acre remnant parcel to the south. After learning of the applicant's wish to solely petition for the rezoning of the nine smaller lots, staff explained the change before the Planning and Zoning Commission, and the petition now being considered concerns only the smaller 1.4-acre area.

At their July 18, 2013, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning petition. Two residents spoke in favor of the rezoning, which, in addition to one request for information, constitute the extent of communications received from the public regarding this item. Both the neighboring citizens and two Commissioners indicated that, their support notwithstanding, they would prefer that the rezoning include a larger area of the Institutional zoning district.

The UDO (7-8-15) states that "The Institutional District is established to reserve land for the development of major educational facilities, major medical facilities and other complementary and supporting uses such as health related developments, office developments, and public services." Staff feels the land no longer is appropriate for this purpose.

By contrast, the stated intent of RS-8 is "to establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development and to stabilize and protect the district's residential character in areas of existing high density single-family development while promoting a suitable environment for single-family living. Non-single-family development normally required to provide the basic elements of a balanced and attractive residential area is also permitted."

When a similar rezoning proposal was initiated by staff in 2011, the primary reason cited for objection on the part of reviewing boards was the lack of support of the property owner. Now that that situation has changed, the property has been subdivided, and the property owner is behind the rezoning, staff feels that the argument for the rezoning is further strengthened.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pro:

- The rezoning establishes zoning on the properties that is more reflective of and compatible with the surrounding single-family neighborhood, the steeply sloping site, and the limited access.

Con:

- None noted.

Staff's analysis indicates that the proposed zoning district would support appropriate development and prevent incompatible development better than the existing zoning, and, accordingly, staff recommends approval.

Mayor Bellamy opened the public hearing at 6:03 p.m.

Mr. Kevin Scarmack, representing the property owner, said that their goal is to fit these lots into more of the character of the Kenilworth neighborhood, and asked for Council's support of these rezonings.

Ms. Teddy Jordan, President of the Kenilworth Residents Association, supported the rezoning and felt that single-family zoning is more compatible with the neighborhood. They continue to have concerns with remaining large tracts of land that have institutional zoning.

Ms. Valeria Hoh, resident on Finalee Avenue, supported the rezoning but hoped that City Council will take steps to zone the other large tracts that are zoned Institutional District.

Mayor Bellamy closed the public hearing at 6:08 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Manheimer found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4221. This motion was seconded by Councilman Smith and carried unanimously.

**ORDINANCE BOOK NO. 28 – PAGE 304**

**V. UNFINISHED BUSINESS:**

**A. RESOLUTION NO. 13-171 - RESOLUTION REMOVING CITY MANAGEMENT DISCRETION TO ALLOW ALCOHOL AT SPECIAL EVENTS OF 1,000 OR MORE ATTENDEES IN CITY PARKS ZONED MEDIUM TO HIGH DENSITY MULTI-FAMILY RESIDENTIAL WHERE THE EVENT BOUNDARY IS WITHIN 100 FT. OF ANY RESIDENTIAL DWELLING UNIT**

Associate City Attorney Jannice Ashley said that this is the consideration of a resolution to remove City management discretion to allow alcohol at Special Events of 1,000 or more attendees in any City Park that is zoned medium to high density multi-family residential (i.e., RM-8 or RM-16) and where the event boundary is within 100 ft. of any residential dwelling unit.

This action is in response to concerns raised at the July 23rd City Council meeting by members of the community surrounding Martin Luther King, Jr. Park in regard to the negative impacts of the Brewgrass Festival, a large (4,000+) special event, where alcohol has been permitted, that has been held in this residentially zoned park for several years. Neighborhood residents stated that negative impacts have included: drunken attendees defacing/disturbing

adjacent residential dwellings, excessive trash, traffic, and unruly crowds. Because of the negative experience with Brewgrass, the community sought assurance from City Council that such events, or similar type events, would not be allowed to occur at MLK, Jr. Park in the future.

In considering special events at neighborhood parks, several criteria factor into the likelihood of impact: size of the event; permitted sale/consumption of alcohol; zoning of City park where event is located; and proximity of event boundary to residential units. Most City parks where large (i.e. 1,000+) special events can be accommodated, and have been permitted, are not residentially zoned (i.e. Carrier Park zoned River; Memorial Stadium zoned Institutional; Pack Square Park zoned CBD). MLK, Jr. Park, however, is zoned RM-8 or medium-density multi-family residential, increasing the likelihood of negative and substantial impact. Therefore, in order to address the concerns raised by residents in the vicinity of MLK Jr. Park, and to mitigate future issues of a similar nature, the drafting of a resolution focused on the aforementioned criteria, appeared to be the most reasonable way to approach this task. The proposed resolution will not allow City management to exercise discretion in allowing certain special events in City parks meeting certain conditions.

Pro:

- MLK Jr. Park cannot be used for special events of 1,000+ where alcohol is allowed.

Con:

- None Known

No fiscal impact is anticipated. There are other, more appropriately zoned city parks/sites which can accommodate large special events where alcohol sale/consumption could be permitted.

City staff recommends City Council adopt a resolution removing City management discretion to allow alcohol at special events of 1,000 or more attendees, in City parks zoned medium to high density multi-family residential, where the event boundary is within 100 ft. of any residential dwelling unit.

In response to Councilman Bothwell, Interim City Attorney McGlohon said that she understood that the neighbors were concerned about the size of the event, but they also concerned about the sale of alcohol. Therefore, staff tailored the resolution as such, without specifically singling out MLK Park.

Ms. Carmen Ramos-Kennedy said that the neighborhood is concerned with the number of people at the event and the sale of alcohol.

Mr. Jonathan Wainscott was disappointed that the neighborhood's concerns have not been heard by City Council for over a year. In addition, he understood that the City has a policy that prohibits festivals and festival-related activities on ballfields; therefore, they have an existing policy that should be enforced.

Mr. Mike Rangel, representing the Asheville Brewers Alliance, supported the Brewgrass Festival and urged Council to come up with an alternative that will help this festival.

Ms. Renee White, President of the East End/Valley Street Neighborhood Association, stated that they are not against the Brewgrass Festival - they just want it removed from their neighborhood community.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Pelly spoke felt it was important for festival organizers to communicate early with neighborhood representatives.

It was the consensus of Council, at the request of Mayor Bellamy, for the City Manager to investigate the location of McCormick Field (instead of Memorial Stadium) for future Brewgrass Festival locations.

Councilman Smith moved for the adoption of Resolution No. 13-174. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 398**

**VI. NEW BUSINESS:**

**A. BOARDS & COMMISSIONS**

Vice-Mayor Manheimer reported that the Boards & Commissions Committee met for the second time with representatives of the community wishing to form the African American Heritage Committee. It was the consensus of the Committee, with City Council concurrence, to instruct Interim City Attorney McGlohon to prepare an enabling resolution or ordinance forming the new committee, noting that said Committee will be a joint committee with Buncombe County.

Regarding the Affordable Housing Advisory Committee, the following individuals applied for the vacancies: Robin Raines, Brandee Boggs and Dawn Nelson. Councilman Bothwell moved to (1) reappoint Barber Melton, Scott Dedman and Lindsey Simerly; and (2) interview Robin Raines. This motion was seconded by Councilman Smith and carried unanimously.

Regarding the Americans with Disabilities Act Compliance Committee, the term of William Madison (representing the disabled community) will expire on August 22, 2013. No one applied for the vacancy. Because the Committee has had no need to meet since its existence, it was the recommendation of the Boards & Commissions Committee and the consensus of City Council that (1) the representative of the disabled community seat remain in an "inactive" status; and (2) the Committee remain in existence. In the event that a hearing is required, or the Committee is required to transact other business, the Committee members will be contacted by the Secretary to the Committee, and if necessary, applications for vacancies will be taken.

Regarding the CrimeStoppers Board of Directors, the following individuals applied for the vacancy: Anthony Mitchell and Fred Cooke. It was the consensus of the Boards & Commissions Committee, and consensus of City Council to interview Mr. Mitchell and Mr. Cooke.

Regarding the Buncombe County Tourism Development Authority, the following individuals have applied for this vacancy: John McKibbon, Pratik Bhakta and John Winkenwerder. It was the recommendation of the Boards & Commissions Committee, and consensus of City Council, to postpone action until September 10, 2013.

Regarding City Council's appointment of the Chair of the Civil Service Board, Councilman Hunt, liaison to the Civil Service Board, explained that there was an error in Council's appointment of Mr. Marvin Rosen, as City Council mistakenly appointed Mr. Rosen beyond his term of office - Mr. Rosen is appointed by the four seated members. Therefore, with the approval of the Civil Service Board, it was the consensus of City Council to proceed with a resolution amendment on August 27, 2013, and develop a functional path moving forward.

**RESOLUTION NO. 13-175 - RESOLUTION APPOINTING MEMBERS TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the River District Design Review Committee.

The terms of Terry Meek (at large member), Darren Green (owner of property in River District), Esther Cartwright (member of RiverLink Board of Directors), Marty Black (owner of property in River District), Richard Hall (member of RiverLink Board of Directors) and Carleton Collins (design professional) expire on September 1, 2013.

The following individual has applied for the vacancies: Marty Weil.

Councilman Hunt moved to reappoint Darren Green (owner of property in River District), Esther Cartwright (member of RiverLink Board of Directors), Richard Hall (member of RiverLink Board of Directors) and Carleton Collins (design professional) to each serve an additional three-year term, terms to expire September 1, 2016, or until their successors have been appointed; and (2) re-advertise. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 35 - PAGE 405**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Timothy Sadler (1) believed the City should consider filing extortion charges against Rep. Tim Moffitt regarding comments he made regarding the Cultural Park Authority and the Water Lawsuit; and (2) asked for Council to consider the less expensive option of providing Sunday bus service.

Councilman Pelly invited the public to participate in the first Asheville Festival of Neighborhoods on Sunday, October 27, 2013, at 3:00 p.m. in the Wilma Sherrill Center at UNC-Asheville. The purpose of the Festival is to honor and recognize successful neighborhood collaborations and the leaders who make them possible.

**Closed Session**

At 7:09 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1); (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: State of North Carolina; Metropolitan Sewerage District of Buncombe County; City of Asheville; W&K Hotels, LLC d/b/a Four Points By Sheraton; Hospitality Lodging Investors, II, LP d/b/a Hotel Indigo; Nesbitt Asheville Venture, LLC d/b/a The Renaissance Hotel; City Council of the City of Asheville; and McKibbon Hotel Group, Inc. The statutory authorization is N. C. Gen. Stat. 143-318.11(a)(3); and (3) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 8:10 p.m., Councilman Smith moved to come out of closed session. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 8:10 p.m.

Magdalen Bouleson
CITY CLERK

MAYOR

# Department of Cultural Resources
# Division of Archives and Records
# Collections Services Section

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